

Implementing the Right to Development in a New Global Order

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DECLARATION

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

Signed: Edward O'Dwyer

Date 19 April, 2019

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This work is the result of my own investigations, except where otherwise stated. Where correction services have been used, the extent and nature of the correction is clearly marked in a footnote(s).

Other sources are acknowledged (e.g. by footnotes giving explicit references).

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Signed Edward O'Dwyer

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Introduction

This study traces the genesis and evolution of the right to development [RTD] from its post-colonial conception through its more than 30 years struggle for recognition and implementation as a human right in the present day. It examines the substantive legal content of the right and considers different geo-political and geo-economic influences which shaped and continue to shape contemporary debate on RTD. It emphasizes that because Westphalian and western-liberal order value systems have both contributed to the reasons for Southern countries needing to promote RTD in the first place, and to shaping the fundamental disagreements and debates which ensued directly following its declaration by the United Nations General Assembly in 1986 as an inalienable human right of every human person and all peoples, further and inclusive inter-regional (civilisations) dialogue on RTD is necessary for any meaningful progress to be made towards its formal codification and implementation at the global level. The study argues that Southern and Eastern values and proposals regarding RTD differ in some key respects from those of the dominant Westphalian-forged West but must be considered on an equal footing as a prerequisite to attaining agreement on common approaches on how to proceed beyond the existing impasse.

The body of the paper examines the direct connection between implementing RTD, the types of rights-based systems operating in different parts of the world and the economic policies these generate to shape the lives and well-being of people across the globe. The West, de facto if not always in discourse, favours prioritizing civil and political rights, while Russia, China and many Asian States [East] seek to do the very opposite, placing focus on realizing economic, social and cultural rights, often emphasizing RTD as the most important right. Many countries of the South seem caught in a whirlwind of different approaches and ever-mounting foreign-debt from failure of or overburden from unsuited development policies which have denied individuals and peoples access to RTD. In parallel, the post-WWII global governance architecture based on the UN Charter and Bretton Woods Institutions is under pressure to transform in order to keep pace with a globalization where international economic law and management resist the constraints of the Westphalian sovereign-state paradigm which defines the positive international public and private law of today.

The study then examines the emerging multi-polarity of world order, including a New International Economic Order [NIEO], which will guide the future of RTD, and identifies the rivalry between the United States and China as a key civilizational relation regarding the future of RTD and global economics. It concludes by recognizing that action on implementing RTD is needed on all human rights fronts, i.e. the codification of a Framework Treaty on RTD, strengthening the implementation and accountability of RTD through existing international law provisions which contribute to RTD, and most essentially through enhanced dialogue and engagement which focuses on all of these issues. There can be no winners per se – the United States, China and all nations will win or lose together.

The Right to Development [RTD] within Human Rights

On 4 December 1986, the United Nations General Assembly adopted the Declaration on the Right to Development [RTD] by a majority vote of 146 to 1 against with 8 abstentions.¹ In its preamble and ten (10) articles, the Declaration affirms many of the fundamental principles in the UN Charter and the Universal Declaration of Human Rights [UDHR]. These include international peace and security, international cooperation for development, the recognition that all human beings are born free and equal in dignity and rights and that all have the right to a standard of living adequate for their well-being, the right to self-determination of peoples, and the right to a social and international order in which the rights and freedoms proclaimed in the Universal Declaration can be fully realized for all people everywhere without discrimination.²

The Right to Development [RTD] is defined as:

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.³

¹ UN Declaration on the Right to Development, UN Resolution 41/128, 4 December, 1986 <http://www.un.org/documents/ga/res/41/a41r128.htm>; The United States voted against the Declaration while Denmark, Finland, Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the United Kingdom abstained.

² United Nations High Commissioner for Human Rights [UNHCHR], Frequently Asked Questions on the Right to Development, Fact Sheet No. 37 at: https://www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf

³ Idem note 1, see Declaration, Article 1

RTD is not codified in global international law but is enshrined regionally: (i) in Article 22, African Charter on Human and Peoples' Rights, the only hard law document bestowing a RTD, binding and enforceable on States. Article 22 is explicit in that the subject holders of the right are “peoples” and not individuals and the significance of that distinction continues to be debated;⁴ (ii) Article 37 Arab Charter on Human Rights gives “every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof”. RTD is also re-affirmed in an array of global and regional soft law instruments including most notably, the earlier 1974 Declaration on the Establishment of a New the International Economic Order [NIEO] and the Charter of Economic Rights and Duties of States of the same year. It was subsequently announced, inter alia, in the 1992 Rio Declaration on Environment and Development and the 1993 Vienna Declaration and Programme of Action among others.⁵ This body of soft law together

⁴African Charter On Human And Peoples Rights, at: <http://www.achpr.org/instruments/achpr/>;

“ Article 22:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.”

See also Karin Arts, Atabongawung Tamo, 2016, The Right to Development in International Law: New Momentum Thirty Years Down the Line? *Neth Int Law Rev* (2016) 63:221–249, DOI 10.1007/s40802-016-0066-x; And at above note 2, UNHCHR Fact Sheet No. 37, Chapter 27, “A regional perspective: article 22 of the African Charter on Human and Peoples’ Rights” Obiora Chinedu Okafor, Section III. Who are the right holders contemplated by article 22? pages 378-380 which highlights the importance of the collective nature of the right despite that the actual Declaration on RTD announces and individual and collective right.

⁵ League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008.

“Article 37

The right to development is a fundamental human right and all States are required to establish the development policies and to take the measures needed to guarantee this right. They have a duty to give effect to the values of solidarity and cooperation among them and at the international level with a view to eradicating poverty and achieving economic, social, cultural and political development. By virtue of this right, every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof.”

See also Idem note 2, page 24 – Reaffirmed, inter alia, in the Millennium Declaration, the 2002 Monterrey Consensus of the International Conference on Financing for Development; the 2005 World Summit Outcome Document, the 2004 ASEAN Human Rights Declaration; the 2007 Declaration on the Rights of Indigenous Peoples the 1994 Cairo Programme of Action of the International Conference on Population and Development; the 1995 Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development and the 1995 Beijing Declaration and Platform for Action, Fourth World Conference on Women.

with its albeit limited codification has however given RTD instrumental value in introducing human rights norms and standards into global governance, and into advocacy for effecting reforms in national and international policies.⁶

Following the adoption of the Declaration RTD, the UN Commission on Human Rights [CHR] and Human Rights Council [HRC] set up structures on RTD including an open-ended intergovernmental working group [still active today] assisted first by an Independent Expert (1988–2004), and later by a High-Level Task Force (HLTF, 2004–2010), to monitor and review its implementation. In 2010, the HLTF defined a “core norm” of RTD as “the right of peoples and individuals to the constant improvement of their well-being and to a national and global environment conducive to just, equitable, participatory and human-centered development respectful of all human rights”.⁷

In 1994, the UN created the Office of the High Commissioner for Human Rights with a mandate *inter alia*:

1. Reaffirming the right to development is a universal and inalienable right which is a fundamental part of the rights of the human person;
2. Deciding, *inter alia*, that the High Commissioner for Human Rights shall:
 - a. recognize the importance of promoting a balanced and sustainable development for all people and of ensuring realization of the right to development, as established in the Declaration on the Right to Development;

⁶ Fukuda-Parr S (2012), The right to development: reframing a new discourse for the twenty-first century, *Soc Res Int Q* 79:839–864 (2012), p. 857 at: <https://link.springer.com/article/10.1007/s40802-016-0066-x> ; Landmark evolutions pertaining to the RTD are also contained, among many others, in the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples , the 1961, 1970 and 1980 Programmes for the United Nations Development Decades; The 1968 Proclamation of Teheran International Conference on Human Rights.

⁷A/HRC/15/WG.2/TF/2/Add.2, 8 March 2010, 8 at: <http://undocs.org/A/HRC/15/WG.2/TF/2/Add.2>; It also identified three attributes of this core norm: (i) comprehensive and human-centered development policy; (ii) participatory human rights processes; (iii) social justice in development.

- b. be responsible to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose.⁸

Most recently, in 2016, the HRC appointed a Special Rapporteur on the RTD with a broad mandate including: “contributing to the promotion, protection and fulfilment of the right to development in the context, among others, of the implementation of the 2030 Agenda for Sustainable Development, the Sendai Framework for Disaster Risk Reduction, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the Paris Agreement on climate change...”⁹ Yet this seemingly positive evolution belies the reality that RTD has had an unstable footing from its conception where even today, its birth is seen by many, notably western neo-liberal lobbies, to be illegitimate.

Marks and Malhotra trace the genesis of RTD back to Senegalese Judge Kéba M’Baye who in 1971 in a UN lecture was the first to propose that development be defined as a human right.¹⁰ In 1977, Senegal as chair at the then Commission on Human Rights [CHR] requested a study on “the international dimensions of the right to development.”¹¹ In response, the UN Secretariat produced a study in 1979 which provided the basis for the 1986 UN Declaration on RTD and anticipated the major challenge of how to translate the concept of RTD “into a notion capable of providing practical guidance and inspiration, based on international human rights standards, in

⁸ A/RES/48/141, 7 January 1994, Resolution adopted by the General Assembly at: <http://www.un.org/documents/ga/res/48/a48r141.htm> [on the report of the Third Committee (A/48/632/Add.4)] High Commissioner for the promotion and protection of all human rights.

⁹ A/HRC/RES/33/14 - Resolution adopted by the Human Rights Council on 29 September 2016 at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/L.29 The right to development. Adopted by a recorded vote of 34 [NAM countries] to 2 [France and the UK], with 11 abstentions. The Special Rapporteur reports annually to the HRC and the General Assembly.

¹⁰ Stephen Marks and Rajeev Malhotra, 2017, The future of the right to development, Harvard University at: <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/134/2018/06/Marks-Malhotra-The-Future-of-the-Right-to-Development-2017.pdf>; See footnote 3 on Kéba M’Baye, “Le Droit au Développement Comme un Droit de L’Homme, Leçon inaugurale de la Troisième Session d’enseignement de l’Institut International des droits de l’Homme, *Revue des droits de l’homme*, vol. 5 (1972), 503.

¹¹ Idem - Senegal made the request in a manner as if the RTD already existed, and that it just needed some clarification.

the context of development activities.”¹² The international climate of the time was characterized by the post WWII progressive codification of human rights within an ideologically and politically charged cold-war global order. “The Economist” reminds us that the capitalist West was keener on Civil and Political Rights [CPR] while the Soviet Union and states aligned with it prioritized Economic Social and Cultural Rights [ESCR], a difference which determined the need for two separate instruments, the International Covenant on Civil and Political Rights [ICCPR]¹³ and the International Covenant on Economic, Social and Cultural Rights [ICESCR],¹⁴ neither of which included RTD.¹⁵

Zalta, Nodelman, Allen and Anderson explain, people and States are “enormously varied in their practices, traditions, religions, and levels of economic and political development” while human rights hard and soft law and activism prescribe universal standards in these same areas.¹⁶ Noting tension between the approach of “Relativism” i.e. that standards for a particular country or region are mostly shaped by the traditions, beliefs, and conditions of that country or region, versus the “Universalist” approach i.e. those holding a philosophically-inclined set of standards and values to human rights activism, they highlight alerts issued at the time, that the UDHR would be seen to represent Western-European and American values and warned that “what is held to

¹² Report of the Secretary-General, UN Doc E.CN.4/1334, 2 January 1979 at:

https://digitallibrary.un.org/record/6652/files/E_CN.4_1334-EN.pdf The international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirement of the New International Economic Order and the fundamental human needs.

¹³ International Covenant on Civil and Political Rights, 19 December 1966, at

<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

¹⁴ International Covenant on Economic, Social and Cultural Rights, 16 December, 1966 at

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

¹⁵ Economist - Human rights: Righting wrongs - Human-rights campaigners are starting to lobby for economic and social rights, such as the right to health and the right to food. Will they make a success of it? Aug 16th 2001 | NEW YORK at <https://www.economist.com/node/739385>; See also UNOHCHR Fact Sheet No.2 (Rev.1) on The International Bill of Human Rights at: <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> - The “International Bill of Rights” was bolstered by seven other core human rights treaties covering fundamental rights and freedoms, none of which codify a specific RTD. The USSR-led socialist bloc favored initiatives on peace and disarmament while former colonies pushed for attention to development, non-discrimination and the contemporary struggle against apartheid. Western countries however focused on violations of civil and political rights [CPR] and avoided commitments to economic, social and cultural rights [ESCR].

¹⁶ Zalta, Nodelman, Allen and Anderson - Human Rights, Stanford Encyclopedia of Philosophy 2014 at:

<https://plato.stanford.edu/archives/spr2017/entries/rights-human/> See section 4. Universal Human Rights in a World of Diverse Beliefs and Practices pages 34-35.

be a human right in one society may be regarded as anti-social by another people.”¹⁷ Lukina points out the universalist outreach of the UDHR faced major obstacles in countries such as the Soviet Union which abstained during the UDHR’s adoption. She notes the Soviet approach favored State guaranteed socio-economic rights which conflicted with free market values and enterprise. These East-West UDHR relations in 1948 represented “a kind of trade-off between personal rights and economic rights.” In this environment, Africa became a significant force within the Non-Aligned Movement [NAM] and the Group of 77 developing countries [G77] policy formulation¹⁸

Africa’s role was aided by the 1981 OAU’s African Charter on Human and Peoples Rights which, D’Sa, notes, was distinguished by its innovative provisions recognizing rights both of individuals

¹⁷ Idem - referring to the American Anthropological Association Statement on Human Rights 1947 at <https://lucian.uchicago.edu/blogs/around1948/files/2012/09/1947-Statement-on-Human-Rights-American-Anthropological-Association.pdf>

¹⁸ Alden C., Morphet S., Vieira M.A. (2010) The Non-Aligned Movement and Group of 77 During the Cold War, 1965–89. In: The South in World Politics. Palgrave Macmillan, London at: https://link.springer.com/chapter/10.1057/9780230281196_3; See also Anna Lukina, Soviet Union and the Universal Declaration of Human Rights, Max Planck Institute for European Legal History Research Paper Series No. 2017-01 Conclusions at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2952292 – go to Introduction, and section on “The Soviet Approach Summed Up”. See also: (i) The International Dimensions Of Human Rights, Karel Vasak, 1982, Greenwood Press, Westport, Connecticut - UNESCO, Paris - See “Historical Foundations of Human Rights and Subsequent Developments” by Imre Szabo on page 26, at: <http://unesdoc.unesco.org/images/0005/000562/056230Eo.pdf> Szabo notes that ESCR in the UDHR are referred to only in passing reflecting a broader trend in the evolution of international human rights law. Reflecting this posture, the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms of the Council of Europe [COE] included only a few SE rights, and focused on CP rights – ECHR Blog at <http://echrblog.blogspot.com/2008/10/social-and-economic-rights-and-echr.html> ; (ii) The European Convention on Human Rights: A-Socio-Economic Rights Charter? Liam Thornton at: http://researchrepository.ucd.ie/bitstream/handle/10197/6132/Chapter_Fourteen_The_ECHR_A_SER_Charter.docx.pdf?sequence=1 ; (iii) European Social Charter of 1961 at <https://www.coe.int/en/web/turin-european-social-charter>. The Charter is the counterpart of the European Convention on Human Rights in the sphere of economic and social rights. Taken together with the ECHR, they provide a comprehensive positive legal framework to ensure protection of all human rights; (iii) The Americas stayed with the UDHR and ECHR approach in 1969 in adopting the OAS American Convention on Human Rights. This regional instrument again focused on CP rights save for article 26 which committed States Parties to adopt measures to “progressively achieve, the full realization of economic, social, educational, scientific, and cultural standards set forth in the OAS Charter” - and the pre-UDHR 1948 American Declaration of the Rights and Duties of Man. See: American Convention On Human Rights - Adopted At The Inter-American Specialized Conference On Human Rights, San José, Costa Rica, 22 November 1969 at <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> See also Christina M. Cerna, Reflections On The Normative Status Of The American Declaration Of The Rights And Duties Of Man - <http://www.corteidh.or.cr/tablas/r31598.pdf>

and the rights of peoples. The latter included the rights to self-determination, to freely dispose of natural wealth and resources and crucially, individual and peoples' right to development [RTD]. The Charter also imposed on States "the duty, individually or collectively, to ensure the exercise of the right to development."¹⁹ Developing countries then supported Senegal's initiative to have the UN declare development itself a human right. As champion of the approach, the NAM / G77 with a majority in the UNGA sought to promote RTD as a right itself, and as a "normative basis and... blueprint for the creation of a more just international economic order."²⁰

This strategic push by NAM/G77 was meant to get the strongest economies of the Western-North to accept greater responsibility for, and directly contribute more to, eliminating the causes of poverty and improving trade terms in favour of developing countries. However, the North was opposed and conceded only that a moral commitment to human development was acceptable. They would not entertain any legal obligation to transfer resources from North to South or to codify any specifics of the Declaration on the RTD to impose such legal obligations which the NAM countries favoured, a tension which continues today.²¹ The Western-Northern response typified by Regan and Thatcher advocated liberal economics which combined philosophical and economic free-market and monetarist theories of Fredrick Hayek, who advocated "competition, markets and prices as... ordering principles", and Milton Friedman whose monetary policy held that prices in an economy are dictated by the supply of money where the State should create conditions for the free market to function, but not regulate it as such.²² Both philosophies

¹⁹African Charter on Human and Peoples Rights, Adopted Nairobi June 27, 1981 at

<http://www.achpr.org/instruments/achpr/>; See also Rose D'Sa, R. (1985). Human and Peoples' Rights: Distinctive Features of the African Charter. *Journal of African Law*, 29(1), 72-81. doi:10.1017/S0021855300005635

²⁰United Nations General Assembly Resolutions 3201 (S-Vi) - Declaration on the Establishment of a New International Economic Order at <https://investmentpolicyhub.unctad.org/Download/TreatyFile/2775> ; see also Res 3202 (S-Vi) Plan of Action.

²¹ Idem note 10 (Marks and Malhotra 2017) on page 3, referring to Regan and Thatcher who "under no circumstances would...allow a text to come out of the committee that would either affirm any legal obligation to transfer resources from North to South or codify any specifics regarding any of the issues contained in the declaration."

²² Fredrick Hayek See: Monetarism, By Bennett T. McCallum at:

<https://www.econlib.org/library/Enc/Monetarism.html>; and Milton Friedman 1912-2006 at:

<https://www.econlib.org/library/Enc/bios/Friedman.html>; Hayek held that markets guaranteed individual liberty to human beings and that any interference from the State in markets disrupted that liberty. Friedman believed the role of the State was to create the environment for the Free market to function but not to regulate it as such.

opposed Keynesian economic theory which insisted on some State intervention to create demand.²³

Not until 2012 did the Association of Southeast Asian Nations (ASEAN) adopt its Human Rights Declaration which included specific provisions on RTD.²⁴ However, the Declaration was met with concern by the UN and human rights organizations for its lack of commitment to protect human rights as opposed to just promoting them.²⁵ Others like Mahbubani defended ASEAN particularism and questioned the real universality of human rights in the first place, favouring an Asian-style approach where economic development is seen as a prerequisite for, and enabler of, respect for human rights to happen.²⁶ Despite this North-South-East divergence on universality and priority of human rights and whether the person or the community should be their focus, the 1993 Vienna Declaration and Plan of Action saw unanimous global acknowledgment that RTD and all ESCR and CPR rights are universal, inalienable and an integral part of fundamental human rights.²⁷ It further affirmed the significance of different national and regional historical, cultural and religious particularities but declared that States have the duty to promote and protect all

²³ Thatcher is famously described as fetching out a copy of Hayek's "*The Constitution of Liberty*" from her bag and slamming it down on the table, declaring "*this is what we believe*". See: Thatcher, Hayek & Friedman at:

<https://www.margaretthatcher.org/archive/Hayek.asp>

²⁴ ASEAN Human Rights Declaration at:

https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf ; see Right to Development paragraphs 35-37

²⁵ Asean Beat: Human Rights Declaration Falls Short at: <https://thedi diplomat.com/2012/11/human-rights-declaration-falls-short/> See also Stephen Hopgood: The Endtimes of Human Rights – See Changing perspectives on human rights - Debating The Endtimes of Human Rights - Activism and Institutions in a Neo-Westphalian World, edited by Douthett Lettinga & Lars van Troost at:

https://www.amnesty.nl/content/uploads/2016/12/debating_the_endtimes_of_human_rights.pdf ; Hopgood states that the ASEAN Declaration "allows public order and public morality concerns to trump rights by mimicking language in the UDHR"

²⁶ Mahbubani, Kishore, Can Asians Think?, 3rd edn (Singapore: Marshall Cavendish Editions, 2004) at 85 – See generally The ASEAN Human Rights System: A Critical Analysis, Asian Journal of Comparative Law, Volume 11, Issue 1, July 2016, pp. 111-140 That is, a developing society must first succeed in economic development before it can attain the social and political freedoms to be found in developed societies. See Google Scholar at:

https://scholar.google.com/scholar_lookup?title=Can+Asians+Think?&publication+year=2004&author=MAHBUBA+NI+Kishore

²⁷ Vienna Declaration and Programme of Action Resolution at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

human rights and fundamental freedoms regardless of different political, economic and cultural systems of governance.²⁸

RTD and the New International Economic Order [NIEO]

Early 1960s international development policies were guided by “law and development” theory, nowadays recast as “good governance”. This approach sought the westernization of Third-World legal systems as a key prerequisite to, and catalyst for, development. The benefits of increased equality, freedom and participation based on respect for CPR would in turn foster improved material standards of living and all benefits would then “trickle down” to the poorest of the poor in society.²⁹ However, as Southern countries emerged from colonialism and began to analyze their own post-colonial legacies, many Southern leaders and elites turned to “Dependency Theory” which refuted the neoclassical free market trickle-down idea and instead held the Northern capitalist system was responsible for underdevelopment in Southern countries. They saw exploitation of cheap Southern labor and resources to supply a one way market in the North, with no correlated socio-economic development in the South. Dependency theorists emphasized social indicators more than economic ones and pursued policies of self-reliance in contrast to the neo-classical models promoted by the International Monetary Fund [IMF] and the World Bank [WB]³⁰ There was also a growing drive to press the North to take responsibility for abuses in

²⁸ Idem note 27 - see paragraphs 1, 5 and 10; This was followed in 2005 by the UN World Summit which declared the universality of all human rights and fundamental freedoms, as interlinked, mutually reinforcing, universal and indivisible core values and principles of the UN - Resolution A/RES/60/1 adopted by the General Assembly on 16 September, 2005, World Summit Outcome at http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

²⁹ Ruth E. Gordon and Jon H. Sylvester, *Deconstructing Development*, 22 *Wis. Int'l. L. J.* 1 (2004) pages 18-21

³⁰ *Theories of Economic Development*, G. Dang and L. Sui Pheng, *Infrastructure Investments in Developing Economies*, DOI 10.1007/978-981-287-248-7_2 © Springer Science+Business Media Singapore 2015, page 18. This theory is considered an extension of Marxist theory (citing Hein 1992). The poor countries are said to be dependent on the developed countries for markets and capital. However, developing countries received a very small portion of the benefits that the dependent relationship brought about. The unequal exchange, in terms of trade against poor countries, made free trade a convenient vehicle of “exploitation” for the developed countries.

the South and the South was forcefully demanding a New International Economic Order [NIEO] in this mindset. The RTD was championed by the G77 as an offspring of these NIEO efforts.³¹

The 1974 Declaration on NIEO proposed by the South through United Nations Conference on Trade and Development [UNCTAD] promoted Southern interests through increasing development assistance, reducing tariffs and improving terms of trade with the North.³² NIEO was meant to revise or replace the post 1945 Bretton Woods, broadly described, “Westphalian system” which the South saw as benefitting Western States, notably the US that created it. Interestingly, the Bretton Woods system had also faltered and in 1971, President Nixon broke from the dollar gold standard set in 1944.³³ The G77 / NAM pushed ahead with NIEO and by 1974 had negotiated strong moral and righteous language into the adopted NIEO Declaration which sought to rectify historic and ongoing wrongs perpetrated by the North on the South.³⁴

In 1975, Hudes described the flurry of international activity which energized support to NIEO including the Lomé Convention between the EU and ACP states, and North South Dialogues of the UNGA. However, the United States did not want structural change in the Bretton Woods

³¹Adeoye Akinsanya and Arthur Davies (1984), Third World Quest for a New International Economic Order: An Overview - The International and Comparative Law Quarterly, Vol. 33, No. 1, pp. 208-217 at: https://www.jstor.org/stable/759614?seq=1#page_scan_tab_contents See introduction and generally.

³² Idem note 20 [Declaration NIEO]

³³ Nixon Ends Convertibility of US Dollars to Gold and Announces Wage/Price Controls August 1971 at: https://www.federalreservehistory.org/essays/gold_convertibility_ends; [The gold standard was calculated at one dollar = 1/35th ounce of gold] See also: Forbes 2011: Nixon's Colossal Monetary Error: The Verdict 40 Years Later at: <https://www.forbes.com/sites/charleskadlec/2011/08/15/nixons-colossal-monetary-error-the-verdict-40-years-later/#77d6629d69f7> This interestingly coincided with US President Nixon's claim in 1971 that Bretton Woods system had faltered due to international speculation against the US dollar and a run on gold and accordingly he broke from the Gold Standard set in 1944 though the US dollar would remain the World Reserve Currency for a time to come; Why and how did USD remain the world reserve currency after Nixon ended the gold standard and Bretton Woods System? at: <https://www.quora.com/Why-and-how-did-USD-remain-the-world-reserve-currency-after-Nixon-ended-the-gold-standard-and-Bretton-Woods-System>

³⁴ Idem note 20 [NIEO], Resolution Para 4, e. The Declaration spoke of assisting developing countries, peoples under colonial alien domination, foreign occupation, racial discrimination or apartheid subjected to economic, political or other coercive measures to obtain subordination and secure advantages through neo colonialism by trying to get control over natural resources and economic activities; See also - Ruth Gordon, (2009), The Dawn of a New, New International Economic Order, 72 Law and Contemporary Problems 131-162 at: <https://scholarship.law.duke.edu/lcp/vol72/iss4/7> - Gordon notes that “Third World nations and peoples demanded a New International Economic Order (NIEO), endorsed by the United Nations...which would provide them, inter alia, permanent sovereignty over their natural resources and more control over their economic destiny.

order and encouraged negotiations between North and South to focus on adjusting the existing system.³⁵ And if the South was envisaging its future through the prism of Dependency Theory, or even if some more progressive Southern leaders sought the middle ground of “embedded liberalism”, the Western-North was fast tracking neo-liberal free market economics against its ideological foe of socialism and communism in the cold-war USSR-led East.³⁶ Against this background, developing countries called for economic and social development through better terms of trade, more control over Trans-National Corporations [TNC] in their territories, permanent sovereignty over their natural resources, and controversially, the right to nationalize and transfer ownership of foreign entities’ resources to the State or to its citizens. And in addition to economic parity, Southern countries sought to establish an obligation on the West-North to provide aid to the South, a proposition which is resisted to this day.³⁷

Gilman argues the NIEO movement was not homogenous in its approaches to RTD even though it can be considered the genealogical starting point for RTD.³⁸ He notes that while all parties agreed to improve the economic situation of the South, there was no consensus on political ends

³⁵ Karen A. Hudes, Towards a New International Economic Order, 2 Yale J. Int'l L. (1975) at:

<http://digitalcommons.law.yale.edu/yjil/vol2/iss1/4> see pages 88-94, 179-181

³⁶Nils Gilman 2015, The New International Economic Order: A Reintroduction, Humanity, Spring 2015 at: <http://humanityjournal.org/wp-content/uploads/2015/03/HUM-6.1-final-text-GILMAN.pdf> See page 7 in particular, Gilman notes the fact of, and importance of the Willy Brandt Book, North-South: A Programme for Survival—Report of the Independent Commission on International Development Issues (London: Pan, 1980). At the time, Northern leaders saw NIEO as one element in the context of a broader and Northern-based “crisis of governability” linked to emergent transnational racial and economic emancipation during the ongoing Cold War. But some leaders [Brandt] did listen and internalize the NIEO calls in earnest; See also Stephen Marks, 2003, Obstacles To The Right To Development, Harvard University at: https://www.google.com/search?q=OBSTACLES+TO+THE+RIGHT+TO+DEVELOPMENT+Stephen+Marks+Harvard+University&rlz=1C1GGRV_enTD803TD803&oq=OBSTACLES+TO+THE+RIGHT+TO+DEVELOPMENT+Stephen+Marks+Harvard+University&aqs=chrome..69i57.3697j0j7&sourceid=chrome&ie=UTF-8 generally and pages 2, 3-4, 8 who notes, the concept of the RTD was always controversial emerging as it did from the legitimate preoccupation of newly independent countries in the South with their specific problems of development and historical exploitation. However, global politics and the agenda of the Commission on Human Rights was dominated by East-West cold war relations which meant the concerns of the South were often marginalized. So while NIEO emboldened Third World delegations to seek space on the world economic and human rights scene, the Western-North was hostile to the idea of a human right to development.

³⁷ Idem note 29, (Ruth Gordon) pages 143-145

³⁸ Idem note 36 (Nils Gilman 2015) page 2 - Including a bid to empower the UNGA to make binding international law; a critique of legal formalism; an effort to create a global regulatory framework for MNCs, an attempt to globalize “embedded liberalism” or a realistic program for global socialism; and a key catalyst (via backlash) for the formulation of the neoliberal paradigm in favor of limiting state power and augmenting private power.

or how to achieve them. NIEO called for interstate socialism at a time of Cold War, but remained agnostic on how to organize national economies which, Gilman notes, were “quite amenable to capitalism...”³⁹ There was acceptance of the principle of absolute respect for the economic sovereignty of nations, but this also gave fuel to critics of NIEO who referred to a demand to transfer resources “*from the poor in rich countries to the rich in poor countries*” where the NIEO unit of poverty was seen as the State, not the individual.⁴⁰ In this regard, from an international legal perspective, NIEO argued against respect of international agreements and contracts joined by previous regimes of their own now post-colonial States. However in doing so, NIEO was unable to resolve the reciprocal legal quandary of empowering Southern states with absolute national sovereignty to hold this position on the one hand, without at the same time empowering Northern states to ignore, under their own absolute national sovereignty, the supranational legal injunctions proposed by the NIEO.⁴¹ In the end, the North would not budge on an issue they saw as culling their power in favour of Southern States, or of elites who ruled in the name of their own peoples.⁴²

The Westphalian-Washington Consensus

Reflecting reality or myth, the World Bank and IMF Breton Woods Institutions are today generally qualified as Westphalian, US-European-led, Western-based Institutions. They are also associated with neoliberal economics based on free markets, free trade, private enterprise and consumer

³⁹ Idem note 36 (Nils Gilman 2015) page 4.

⁴⁰ Idem note 36 (Nils Gilman 2015) page 4, footnote 13 referring to H.W. Arndt, *Economic Development: The History of an Idea* (Chicago: University of Chicago Press, 1987), 142–45.

⁴¹ Idem note 36 (Nils Gilman 2015) page 5, footnote 17 referring to William L. Scully of the Heritage Foundation who made this argument in a policy briefing titled “The Brandt Commission: Deluding the Third World” (April 30, 1982) in which he condemned “international redistributive schemes” as entailing “a degree of coercion, the abrogation of sovereignty, and the denial that man has a fundamental right to the fruits of his labor”

http://s3.amazonaws.com/thf_media/1982/pdf/bg182.pdf

⁴² Idem note 36 (Nils Gilman 2015) pages 7-9; See also Aggarwal and Weber Vinod K. Aggarwal and Steve Weber APRIL 18, 2012 *The New International Economic Order*, Harvard Business Review at: <https://hbr.org/2012/04/the-new-new-international-econ> who note the rich West-North was confident of winning the argument because they believed Southern countries had little or no power to push their position; See additionally Ruth Gordon 2009, Idem note 38, page 144, who highlights that in the 1970s, it transpired that the North refused to vote in favor of NIEO resolutions and ensured western views of international law prevailed, and prevented Southern proposals from attaining even the aspirational status of “soft law” as a guide for governmental behavior.

choice, deregulation and the removal of government interference in the economy.⁴³ As Mulcaire notes, the Westphalian myth was used post WWII to translate the United Nations Charter into a meaningful framework for international order and developed into a powerful and shared consciousness of society which continues, for good or for bad, to guide International Law [IL] and International Relations [IR] today. However, within this formula there is a fault line which appears between, on the one hand, the core pillars of the Westphalian IL-IR system: (i) juridical sovereign equality of states; (ii) respect for territorial integrity of states; and (iii) non-interference in the domestic affairs of other States; and on the other hand, the more evolutionary concepts of liberal order involving an expanded reach of public international law, with its binding inter-state arbitration, institutions and agreements to regulate commerce, trade and human rights, and human rights approaches such as R2P which contest State sovereignty when States do not respect and protect the fundamental human rights of their peoples. In this way, what is loosely termed the Westphalian system has two distinct logics: a formal Westphalian one which respects autonomy and inviolability of States and their territorial jurisdictions, and a progressive overgrowth of evolving liberal-order logic which Harris explains, “insists upon the inexorable eradication of difference between international system’s constituent units” in that liberal order demands states be obedient to liberal principles in foreign and aspects of domestic policy.⁴⁴

And so it is with development and RTD. In citing Krugman, Gordon notes development policies tend to follow the prevailing ideology and trends in the West where cycles of conventional wisdom on development theory emerge and fade as yet new hypothesis are born.⁴⁵ The 1980s embraced the neo-liberal period based on the Washington Consensus, with its firm belief in the market’s “invisible hand” [Adam Smith], the rationality of economic actors’ choice, and a minimalistic vision of the states’ regulation of economies.⁴⁶ While African governments sought to promote their own industrialization, reduce imports save for manufacturing imports they

⁴³ Idem note 43 [Harris]; See also: The IMF and the WORLD BANK: Puppets of the Neoliberal Onslaught at: <https://www.mit.edu/~thistle/v13/2/imf.html>

⁴⁴ Idem note 43, [Harris] (2015);

⁴⁵ Idem note 29, Ruth Gordon (2009), at page 145

⁴⁶ Carlos Lopes (2012), Economic Growth and Inequality: The New Post-Washington Consensus, RCCS Annual Review [Online], 4 | 2012, at <http://journals.openedition.org/rccsar/426> DOI:10.4000/rccsar.426 See page 2.

needed, gain favorable terms of trade for exports and promote social and economic progress,⁴⁷ the Washington Consensus' recipe promoted the South to deregulate markets and focus on creating the legal and financial frameworks that allow capital to follow freely. Gordon explains that Southern countries were lured into expensive development projects they could not pay for and quickly became heavily indebted. In tandem, private capital flows to these countries dried up due to lack of absorption capacity for productive investment.⁴⁸ The Washington Consensus approach factually did not work in the South, but Southern dependence on external loans organically increased as a result. The IMF responded with Structural Adjustment Programmes [SAP] conditioned on anti-inflationary macroeconomic stabilization policies, private sector and free market development, controlling budget deficits, privatization of the public sector, eliminating subsidies and cutting public support for social services, all designed to improve countries' balance of payments and control and manage foreign debt.⁴⁹ However, by 2000, the World Bank had determined that this model too had failed to stimulate economic development in developing countries with weak and inadequate legal and regulatory frameworks, and different cultural and historical contexts.⁵⁰ Testifying to the centrality and primacy of good economics to peace and the respect of human rights, Lopes notes that these policies prompted a wave of popular unrest that contributed to the recrudescence of many civil wars in the 1990s, and gave rise to the 1997 Asian debt crisis.⁵¹ Today there is a strong realization in the evolving

⁴⁷ Idem note 46 Carlos Lopes (2012) at page 2. The Washington Consensus formula was presented as similarly applicable in developed and developing countries and was applied for more than two decades in Africa, Latin America, Asia, and Eastern Europe through its macroeconomic stabilization reforms and structural adjustment programs which ultimately led to the debt crisis in the 80s.

⁴⁸ Idem note 29, Ruth Gordon (2009), at page 145

⁴⁹ Franz Heidhues and Gideon Obare 2011: Lessons from Structural Adjustment Programmes and their Effects in Africa, *Quarterly Journal of International Agriculture* 50 (2011), No. 1: 55-64 at: https://ageconsearch.umn.edu/bitstream/155490/2/4_Heidhues.pdf

⁵⁰ Theories of Economic Development, G. Dang and L. Sui Pheng, *Infrastructure Investments in Developing Economies*, DOI 10.1007/978-981-287-248-7_2, © Springer Science+Business Media Singapore 2015, at: https://www.researchgate.net/publication/316268764_Infrastructure_Investments_in_Developing_Economies See page 19, citing World Bank. (2000). *Entering the 21st century—World development report 1999/2000*. New York: Oxford University Press.

⁵¹ Idem note 46 Carlos Lopes (2012) at page 3; See also Stephen Grenville 2018, *GLOBAL ECONOMY: No consensus on the Washington Consensus*, Lowy Institute, The Interpreter at: <https://www.lowyinstitute.org/the-interpreter/no-consensus-washington-consensus> - Grenville argues that Williamson's 10 principles of the Washington Consensus were a sensible starting point for economic policy but were not meant as a program of reform. He believes the principles were hijacked by motivated neo-liberalist manifestos including Friedman's which supported nuanced paradigms around monetarism, low taxes without progressivity in rates, minimal social programs

global economy, in line with Oxfam's findings, that liberal theory is causing growing inequalities and a scandalous concentration of income with a select few, while poverty and exclusion still reign in many societies.⁵²

Perspectives on the Right to Development ⁵³

Regarding the United States, Marks notes, the US opposes RTD because it challenges neo-liberal priorities by acknowledging rights and duties in the area of ESCR.⁵⁴ This is evidenced by US opposition to the 2003 HRC proposal to prepare a concept document on a legally binding

and a diminished role for the state. These dynamics created a highly deregulated market which eventually spun out of control with the US 2007 subprime mortgage and the 2010 European sovereign debt crises showing that developed economies were also not immune from financial crises. Grenville states that "Financial supervisors had failed to constrain excessive credit growth, leverage, asset booms, and mis-matches (both maturity and currency)" citing that even Alan Greenspan, admitted financial markets were not self-correcting. Here Grenville notes that Latin American and China actually incorporated the essentials of the Washington Consensus in their models, BUT in their own way i.e. where the State did not abdicate from regulation but did nonetheless embrace the free market; See also Ronald H. Coase and Ning Wang 2013, *How China Became Capitalist*, Cato Institute, at: <https://www.cato.org/policy-report/januaryfebruary-2013/how-china-became-capitalist> See Conclusion which states: "Over the past 35 years, China has embraced capitalism not just in the economy. **The Theory of Moral Sentiments** has more than a dozen Chinese translations; the book has won the heart and mind of premier Wen Jiabao. The message of Adam Smith resonates strongly with the Chinese, not least because of its striking affinity with the traditional Chinese thinking on economy and society. A surprising outcome of China's transition to capitalism is that China has found a way back to its own cultural roots."

⁵² Oxfam Davos Report "Reward work, not wealth. To end the inequality crisis, we must build an economy for ordinary working people, not the rich and powerful" at: https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-reward-work-not-wealth-220118-en.pdf ; See also Oxfam Press Release "Richest 1 percent bagged 82 percent of wealth created last year - poorest half of humanity got nothing" at <https://www.oxfam.org/en/pressroom/pressreleases/2018-01-22/richest-1-percent-bagged-82-percent-wealth-created-last-year>; See also Carlos Lopes (2012) Idem note 50, at page 3, para 15.

⁵³ A/HRC/39/51, Report of the Special Rapporteur on the right to development, 20 July 2018 at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/230/06/PDF/G1823006.pdf?OpenElement> - In his 2018 Report, Special Rapporteur on RTD, Saad Alfarargi recommended very practical and doable actions to advance implementation of the SDGs and the Sendai, Addis and Paris Climate Change Agreements including, inter alia, accountability through effective legal mechanisms towards protecting and promoting RTD through people having effective access to detailed information and consultation schemes on all development policies and activities at the international and domestic levels. In particular, the recommendation on legal accountability mechanisms does not call for an international convention as a prerequisite to access justice for the violation of human rights in the context of development processes. One is left with the impression the Special Rapporteur has a good grasp of his diverse global audience and is navigating slowly and carefully with his recent mandate.

⁵⁴ Stephen Marks, 2004, *The Human Right to Development: Between Rhetoric and Reality*, Harvard Human Rights Journal / Vol. 17 at: https://cdn1.sph.harvard.edu/wp-content/uploads/sites/580/2012/10/spm_the_human_right_development.pdf See page 152. However, where the US perceives such concerns are not present at international fora, the US has gone along with consensus positions on the RTD and even acknowledged RTD by supporting the 1993 Declaration of Vienna.

instrument for RTD holding that: “States . . . have no obligation to provide guarantees for implementation of any purported “right to development.”⁵⁵ Marks details US resistance to RTD as:

- (i) Ideological in that the US experience is built on self-reliant, entrepreneurial capitalist-based efforts and hard-won success that cannot be willed onto others through a Declaration. That any transfer of resources or aid is a matter of sovereign decision and not subject to binding rules under the guise of advancing every human being’s RTD;⁵⁶
- (ii) A disagreement on the very relation between RTD and ESCR with regard to Art 6(2) of the Declaration on the RTD.⁵⁷ The US does not recognize RTD as a fundamental, basic or essential human right;⁵⁸
- (iii) Conceptual objections in that the formulations and definitions of RTD are unclear with no agreement on content of definition;⁵⁹
- (iv) Jurisdictional objections in that the Human Rights Commission and its successor the Human Rights Council [from which the US withdrew in 2018] has no jurisdiction over “matters of trade, international lending and financial policy, activities of transnational corporations, and other aspects of globalization.”⁶⁰

⁵⁵ Idem note 54, Stephen Marks (2004), Page 150 and footnote 2, referring to United States Government, Statement at the U.N. Commission on Human Rights, 59th Session, Comment on the Working Group on the Right to Development (Feb. 10, 2003); See also Statement by Joel Danies, U.S. Representative to the U.N. Human Rights Commission, Summary Record of the 63d Meeting, 59th Sess., at 5, 15, U.N. Doc. E/CN.4/2003/SR.63 (2003) at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/140/69/PDF/G0314069.pdf?OpenElement>

⁵⁶ Idem note 54, Stephen Marks (2004) page 147 and footnote 47.

⁵⁷ Declaration on the Right to Development, Art 6 (2) - “All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights”.

⁵⁸ Idem note 54, Stephen Marks (2004), Page 150 and footnote 2 - The US holds that ESCR are progressive and aspirational and do not require legal duties and obligations by States, especially no obligation for implementation of a “purported” RTD.

⁵⁹ Commission on Human Rights, 54th Sess., 58th mtg. at 4, 10, U.N. Doc. E/CN.4/1998/SR.58 (1998) at: <https://www.ohchr.org/en/issues/freedomreligion/pages/annual.aspx>

⁶⁰ Idem note 54, Stephen Marks (2004), page 143 and 149. Here it is worthy of note that the US as a major UN donor encouraged OHCHR not to divert its limited resources to pursuing accountability for RTD even though this role is central to OHCHR’s mandate and mission.

(v) Objections to a legally binding convention on RTD.

Nonetheless, US practice presents an apparent contradiction on RTD, for example, when one year earlier at Monterey 2002, reflecting US important ODA spending in a model similar to that of RTD, President G.W. Bush stated that “Developed nations have a duty not only to share our wealth, but also to encourage sources that produce wealth: economic freedom, political liberty, the rule of law and human rights.”⁶¹

The People's Republic of China [PRC],⁶² with a population of some 1.3 billion has elevated more than 700 million from poverty in the last 30 years.⁶³ The World Bank notes China’s rapid growth from a centrally planned⁶⁴ to a market based economy to become an upper middle-income country with complex development needs.⁶⁵ Li notes, “Twenty-plus years after the “end of

⁶¹ President George W. Bush, Remarks at the International Conference on Financing for Development in Monterrey, Mexico, (Mar. 22, 2002) at: <http://www.un.org/ffd/statements/usaE.htm>

⁶² Constitution of People's Republic of China as amended March 11, 2018 at : http://www.gov.cn/guoching/2018-03/22/content_5276318.htm; The Communist Party of China [CPC] explains this as a combination of democracy among the people and dictatorship against the people’s enemies”

⁶³ Phoebe Oyugi 2018, The Right to Development in Africa: Lessons From China at: https://www.researchgate.net/publication/328223604_The_Right_to_development_in_Africa_Lessons_from_China [Included in Book Perspectives on the Right to Development, Publisher: Pretoria University Law Press (PULP)] See page 284 and footnote 56. The “socialist system is the fundamental system” of the Republic and the “leadership of the Communist Party of China is the most essential feature of socialism with Chinese characteristics.

⁶⁴ Is China a democracy? A long (and better) answer, Alan Wong, I N K S T O N E N E W S . C O M, September 2018, citing Jessica C Teets. Civil Society Under Authoritarianism: the China Model, (New York: Cambridge University Press, 2014.) at: <https://www.inkstonenews.com/china-translated/china-democracy/article/2163522>

⁶⁵ The World Bank in China at: <https://www.worldbank.org/en/country/china/overview>; See also World Economic Forum, The world's biggest economies in 2018, at <https://www.weforum.org/agenda/2018/04/the-worlds-biggest-economies-in-2018/>; China has clearly emerged as a major player in global relations with, according to the World Economic Forum, and citing IMF data, the world’s second largest economy worth \$14 trillion in 2018; See also Forbes Magazine, referring to the number of Skyscrapers constructed globally notes that “Nobody Comes Close To China In 2018” citing 88 new buildings in comparison to 13 in the United States. It also notes that this trend has been constant over the 23 years.

history”, China’s growth remains a bright spot for the global economy”⁶⁶ having embraced Western ideas of “democracy” and “freedom” in its own way.⁶⁷

Article 33 of the PRC Constitution sets the fundamental principle that "The state respects and protects human rights."⁶⁸ A White Paper on “The Right to Development: China's Philosophy, Practice and Contribution” issued 2016, states that China “appreciates the articulation in the UN's "Declaration on the Right to Development", that RTD “is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”⁶⁹ However, in contrast to the US, China focuses on promoting and implementing ESC rights as a means to eliminate poverty, and thereby, as a means to implementing RTD. The White Paper explains the rights to subsistence and development are the primary, basic human rights. That poverty is the biggest obstacle to human rights and that without production and supply of material goods, it is difficult or even impossible to realize any other human right. In this approach, RTD is incorporated into other human rights where development is the means to eliminate poverty and create conditions which make it possible to realize other human rights, and release human potential.⁷⁰ China also calls on all countries to

⁶⁶ Li, He. (2015). The Chinese Model of Development and Its Implications. World Journal of Social Science Research, 2(2), 128-138. Available at: http://scholarworks.merrimack.edu/pol_facpub/18 Li quotes Nathan who cautions that other authoritarian governments encouraged by the idea that authoritarianism is compatible with modernization, try to pursue Chinese methods.

⁶⁷ Idem note 67 [Li, He. 2015]. Li holds that “Chinese exceptionalism” is ever present in its thinking and policy but that China does not promote a “China model” abroad and does not believe its Model is a one-size-fits-all, nor that it is an alternative to other models.” Indeed China may have practical grounds for this cautious approach as according to Li, the China Model is losing its luster due to its recent economic slowdown. In this regard, the Economist notes the current trade tussle with the US has raised uncertainty about the economic outlook for China and unsettled the Chinese financial markets. China’s economy has started to show signs of fatigue as credit expansion slows and domestic demand from government-funded infrastructure investment and consumer spending looks to be softening – see Economist – “As its trade tussle with America heats up, China is on the back foot” at: <https://www.economist.com/finance-and-economics/2018/07/05/as-its-trade-tussle-with-america-heats-up-china-is-on-the-back-foot>

⁶⁸ Idem note 62, China Constitution amended 2018, Art 33

⁶⁹ White Paper on The Right to Development: China's Philosophy, Practice and Contribution, issued December 2016 by The State Council Information Office of the People's Republic of China at: <http://www.scio.gov.cn/32618/Document/1534069/1534069.htm>

⁷⁰ Idem note 69, White Paper RTD at pages 3-4 where it clearly states that:

- RTD is incorporated into other human rights which create conditions for people to facilitate development and realize the RTD;

pursue equal, open, all-round and innovative common development noting that global governance must follow new world economic patterns based on equality, and an enhanced voice and representation of emerging markets and developing countries.⁷¹

Russian Federation Constitution Article 7 states "The Russian Federation shall be a federal state, whose policies shall be aimed at creating conditions which ensure a dignified life and free development of man", and "shall protect the work and health of its people, establish a guaranteed minimum wage, provide state support for family, motherhood, fatherhood and childhood, and also for the disabled and for elderly citizens, develop a system of social services and establish government pensions, benefits and other social security guarantees".⁷² In 2015, the Russian Ambassador to the United Kingdom, Yakovenko, decried the politicization of human rights and usage of human rights for political pressure, stating:

"...the Human Rights Council's fundamental operating principle should be based on cooperation between states and respect for each other's sovereignty and equality. The bulk of the responsibility for protection of human rights rests with individual states....the promotion and protection of human rights should be an objective in itself and not a political instrument nor a tool of geopolitics."⁷³

He also explained that while Russia believes equal attention is needed for all rights, as well as the right to development, narrow interpretations of international human rights standards are not helpful. He stressed that what "is typical of one society or region is not necessarily good for others" and that each state and society has the right to choose their own path of development.⁷⁴

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- RTD is a human right owned by each individual as well as by the country, the nation and the entire population;
 - RTD must be enjoyed and shared by all peoples and all countries are responsible and the international community has the obligation for its realization.

⁷¹ Idem note 69, White Paper RTD, at page 4.

⁷² The Constitution of the Russian Federation, Adopted at the December 12, 1993 Referendum, see Art 7 at: http://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCk6BZ29/content/id/571508

⁷³ Human Rights Undermined When Used As Political Tool [Ambassador Yakovenko] at: <https://www.rusemb.org.uk/ambarticles/417>

⁷⁴ Idem note 73 [Ambassador Yakovenko]. As a general comment, there appears to be a certain economy in Russian government policy and law texts on mentioning the RTD specifically, or human rights generally, while there is

In this optic, Russia reaffirmed its support for the United Nations at the UNGA 2018 as a “unique platform for equitable dialogue aimed at seeking solutions with due regard for different opinions and based on the purposes and principles of its Charter.”⁷⁵ In these respects, Russia seeks increased international cooperation within Agenda 2030, the SDGs the Sendai Framework 2015-2030 and the Paris Agreement on Climate change.⁷⁶

The G77 (and-China) 2014 Extraordinary Summit adopted a Declaration applauding its achievements on the Declaration on the Establishment of a New International Economic Order [NIEO] in 1974, and the Declaration on the RTD in 1986.⁷⁷ Leaders stressed continuing South to North dependency with inequity in the global economy, reaffirmed full respect for the UN Charter, international law and the Declaration on RTD with the sovereign right of countries to decide their own development priorities and strategies. They stressed international rules should

discernable vexation on the part of the Russian government to “the politicization of human rights to advance other interests.”

⁷⁵ Russia’s position at the 73rd session of the UN General Assembly at: <https://rusemb.org.uk/fnapr/6659>

⁷⁶ Idem note 75, Attaching importance and stating commitment to:

- International cooperation on the social, economic, financial, environmental and other related tracks of the UN work for the successful implementation of the 2030 Agenda and the “comprehensive, interrelated, non-politicized and indivisible nature of the Sustainable Development Goals”, the Sendai Framework 2015-2030 and the Paris Agreement on Climate change;
- Strengthening the high-level political forum [HLPF] on sustainable development under the aegis of the ECOSOC;
- The UN Secretary-General reform of the UN development system in line with the Quadrennial Comprehensive Policy Review [QCPR] of operational activities of the UN development system;
- The implementation of the Addis-Ababa Action Agenda on financing for development to achieve the SDGs stressing the importance of international cooperation;
- Supporting the WTO and work to foster the development of a universal, rule-based, open, nondiscriminatory and just multilateral trade system noting their disagreement with unilateral trade restrictions and protectionist measures.

Finally, calling on increased international cooperation on ensuring global food security it reaffirmed support for the Third UN Decade for the eradication of poverty and further elaboration of practical measures to eradicate poverty, develop industrial facilities, particularly in least developed countries. See also Report on Implementing the Principles of Sustainable Development in the Russian Federation. Russian Outlook on The New Paradigm For Sustainable Development. Preparing For “Rio + 20” at:

<https://sustainabledevelopment.un.org/content/documents/1043natrepeng.pdf>

⁷⁷ The South Centre • South Unity in Diversity | G77 Summit Declaration a worthy marking of 50th anniversary at <https://www.southcentre.int/g77-extraordinary-summit-declaration-santa-cruz-15-june-2014/>. The original Group of 77 was set up in 1964 with a Joint Declaration of the Seventy-Seven Countries at the United Nations Conference on Trade and Development (UNCTAD) in Geneva. Today the G77 comprises 134 countries, including China as an associate. The membership includes African countries, Least Developed Countries, Landlocked Developing Countries, and Small Island Developing States.

allow policy space and flexibility for developing countries to express their national interests and needs while stressing that poverty in the South is juxtaposed with increasing depletion of resources and environmental degradation, where the power of large MNCs goes unchecked. In January, 2017, the Group reaffirmed its commitment to Agenda 2030.⁷⁸

In Africa, recent scholarship has renewed and reinforced the importance of RTD to the future of that continent.⁷⁹ Scholars provide African perspectives of an unequal relationship which colonial powers formerly held and continue to hold over Africa through the unequal evolution of economic development in Africa, and the non-realization of RTD. Studies note that because RTD as both an individual and collective right of persons originated in developing countries, it continues to be met with resistance and lack of acceptance as a right in itself by developed countries. That while many [Southern] scholars see RTD as the most important of all human rights, a host of other scholars⁸⁰ and stakeholders see RTD as an unattainable illusion, without a universally accepted definition, unnecessary and only conceptually and practically understandable within a specific context.⁸¹ Proud of the African Charter codification of RTD, they lament that most binding domestic, regional and international instruments are silent on RTD.⁸²

⁷⁸ G77 Urges UN to Address Developing Countries' Needs at: <https://archive.indepthnews.net/index.php/global-governance/the-group-of-77/936-g77-urges-un-to-address-developing-countries-needs> - Also reaffirmed its commitment to paragraph 74 whereby "follow-up and review processes at all levels will be voluntary and country-led, will take into account different national realities, capacities and levels of development and will respect policy space and priorities.

⁷⁹ Edited by Carol C Ngang, Serges Djoyou Kanga and Vusi Gumede 2018: Perspectives on the right to development, Pretoria University Law Press (PULP) at: <http://www.pulp.up.ac.za/component/edocman/perspectives-on-the-right-to-development>

⁸⁰ Idem note 79, see Section on General Perceptions and footnote 4. Donnelly is frequently referred to in the different articles as an adversary of RTD. Footnote 4- [J Donnelly 'The right to development: How not to link human rights and development' in CE Welch Jr & RI Meltzer (eds) *Human rights and development in Africa* (1984) 261-283; A Vandenbogaerde 'The right to development in international human rights law: A call for its dissolution' (2013) 31(2) *Netherlands Quarterly of Human Rights* 187-209; J Whyte 'Book review: Development as a human right edited by Bard A Andreassen and Stephen P Marks, Harvard University Press, London England, 2006' (2007) 1(1) *The Electronic Journal of Sustainable Development* 47-49.]

⁸¹ Idem note 79, Chapter 1 page 2. They note that Southern developing countries champion the RTD cause to try to address injustices resulting from the imbalances of the global system while Western industrialized countries continue to disagree that developing countries are entitled to RTD under international law.

⁸² Idem note 79, Chapter 1, page 3.

Saah advances an accusatory view that Sub-Saharan Africa has been alienated by Western values and ideologies of freedom and equality, through shrewdness, hypocrisy and false pretense while the West makes fortunes on the backs of impoverished Southern nations and peoples and denies them the RTD. He believes there is a false symbolism in “Marianne” [the US Statue of Liberty and symbol of French Revolution] which he denotes a “racist icon” because of an untrue western monologue of liberty and equality. He stresses “Monologue” must change to “Dialogue” whereby the real symbolic value of Marianne can deliver all peoples from poverty, and have their RTD accepted and universally protected.⁸³ Adeola concludes that the extraterritorial reach of article 22(2) of the African Charter implies a duty on state parties to assist in the realization of RTD beyond their national territories.⁸⁴ Durojaye, Adeniyi and Ngang explain that access to RTD in the African context is best facilitated through traditional conflict resolution mechanisms characterized by communalism and which promote reconciliation. That active and meaningful participation of traditional parties involved in customary systems they master can promote rule of law and ultimately ensure that the right to socio-economic and cultural development is achieved in line with the SGD and Africa’s Agenda 2063.⁸⁵ However, Oyugi ultimately draws on lessons from China. She notes China has uplifted 700 million people from poverty in only 30 years through its prioritization of RTD, in particular the right to subsistence, above all other rights.⁸⁶ Referring to China’s White Paper on RTD, she notes the PRC places collective rights over

⁸³ Idem note 79. See Paper by Clotaire Nengou Saah 2017: ‘Marianne’ – The Symbol of Freedom: A Critical Analysis In Light Of the Right to Development in Africa.

⁸⁴ Idem note 79. See Paper by Romola Adeola 2017: The Right to Development under the African Charter: Is There an Extraterritorial Reach? – See pages 40-45. However, he notes that realizing such assistance requires the African Commission to pronounce on extraterritorial RTD obligations and regional financing of development where States must establish effective financial monitoring systems inter alia to stem corruption. He makes this conclusion following an analysis of: (i) states parties jurisdiction based on spatial extraterritoriality, effective control of territory, and acts of the state that have human rights consequences arising from the African Charter; (ii) requirements of acting individually and in solidarity with regard to Art 20(3) and Art 22 of the Charter; and (iii) the “contentious but emerging recognition” of development assistance as an imperative duty on states in realizing development globally”

⁸⁵ Idem note 79, Ebenezer Durojaye, Oluwafunmilola Adeniyi and Carol C Ngang (2017), Access to Justice as a Mechanism for the Enforcement of the Right to Development in Africa - See conclusion.

⁸⁶ Idem note 79, Phoebe Oyugi: The Right to Development in Africa: Lessons from China. She notes China believes the fulfilment of RTD is key to the realization of other rights. With regard to the North / South debate on RTD, she summarizes voting patterns to reveal that developing countries in the global south support RTD while developed countries in the North either, at best moderately support it, or are simply hostile to it. Yet she states, referring to works by Bunn and Alston, that RTD is, at least, on the verge of becoming a “principle” of positive international law – see page 278, footnote 25 referring to Bunn (n 5) 143, and also P Alston ‘The shortcomings of a Garfield the Cat approach to the right to development’ (1985) 15 California Western International Law Journal 510.

individual rights and prioritizes ESCR over CPR explaining the individual has not been, and is not at the centre of Chinese culture. Like other Asian countries, communitarian values are most important. Significantly, she points out that China's success is measured (internally) on the performance of its economic policies and NOT by adherence to Marxist-Leninist theories. That success in realizing civil and political rights is treated as a downstream result of China's struggle/efforts to increase performance of its economic policies first.⁸⁷ In this she recognizes Africa's unique jurisprudence on RTD and related rights⁸⁸ but laments that jurisprudence cannot have traction for RTD in Africa while many of its countries still grapple with poverty and underdevelopment. On this background she concludes that China's consideration of RTD as the most important right of all human rights, and citing Liu Zhenmin, UNSG for Economic and Social Affairs, serves as an example for Africa.⁸⁹

International Financial Institutions [IFI]⁹⁰

De Zayas remarked in 2018 that some observers contend the World Bank and IMF have a greater impact on world affairs than all the resolutions of the United Nations General Assembly and the

⁸⁷ Idem notes 79 and 86 pages 292-294 -- She compares China and Africa noting that while they are different in a country-Vs-continent sense, they have similarities in areas such as: the sizes of their populations [1.3 million in China and 1.2 million in Africa]; the heterogeneity of their populations; collectivism in China and sense of community in Africa; and their shared history regarding colonialism, imperialism and foreign domination.

⁸⁸ Idem note 79 and 86, page 289, see section 4.2 "Africa's contribution to the jurisprudence on the right to Development" explain the key legal cases including inter alia, the SERAC case involving the Ogoni people of the Niger Delta and the Shell Corporation, and the Endorois in Kenya.

⁸⁹ Idem note 79 and 86, page 293 footnotes 108 and 109. While she agrees that the approach of prioritizing rights [RTD and ESCR] as sound, she remarks that China too, since the time of the "reform and opening up" has coming under increasing internal pressure from civil society groups to reform in the area of CPR and it has made efforts to do so. She therefore suggests that while RTD should be prioritized in Africa, governments must also protect CPR in tandem, that CPR cannot be violated in the name of development. Finally she calls on more research on Chinese implementation of RTD and for more analysis on needs in Africa to seek to apply lessons from the Chinese model depending on the cultures, needs and priorities of the peoples involved. See also 274, footnote 3 referring to Wo Hongbo "Keynote address – International seminar on the 30th anniversary of the adoption of the UN Declaration on the Right to Development – Sharing development: For delivering greater benefit to all people in the world" (2016) UN Department of Economic and Social Affairs

<https://www.un.org/development/desa/statements/mrwu/2016/12/keynote-address-international-seminar-on-the-30th-anniversary-of-the-adoption-of-the-un-declaration-on-the-right-to-development.html>;

⁹⁰ The IMF and the WORLD BANK: Puppets of the Neoliberal Onslaught at:

<https://www.mit.edu/~thistle/v13/2/imf.html>

Economic and Social Council combined.”⁹¹ Giving another perspective, UN Special Rapporteur on extreme poverty and human rights, Philippe Alston, notes the World Bank’s increasing reluctance to engage with human rights, a phenomenon he attributes mainly to the expansion of China’s bilateral lending program through the New Development Bank [NDB] and the Asian Infrastructure Investment Bank [AIIB].⁹² In this regard, Kevin Rudd, President of Asia Society Policy Institute, notes that the new China-led NDB and AIIB are vehicles to project its socio-economic policies in a new and affirmatively outward manner in the context of its “Belt and Road Initiative”⁹³ On the human rights dimension, Alston warns, referring to a lack of nimbleness and heavy administrative procedures of the World Bank, and a current proliferation of major (alternative) international lenders including from the private sector, that China was/is not made more competitive through a lack of human rights conditionality in its lending. Advocating that prospective internal reform of the World Bank should not pursue a path of dis-connectivity with human rights in “a race to the bottom” regarding international standards,⁹⁴ Alston insisted that neither World Bank or the IMF had ever pursued human rights conditionality or outcomes in their own work to date, so they could not now use non-engagement-with-human-rights arguments to explain China’s relative competitiveness [perceived or real] in development financing.⁹⁵

In 1998 in a Foreword to the World Bank Report “Development and Human Rights: The Role of the World Bank”, Mary Robinson, then High Commissioner for Human Rights, understood renewed commitment by the World Bank in human rights. Citing RTD as all-encompassing in the realization of ESCR and CPR, Ms. Robinson emphasized the Bank’s express role in promoting and

⁹¹ Report of the Independent Expert on the promotion of a democratic and equitable international order, A/HRC/36/40

⁹² A/70/274 - Report of the Special Rapporteur on extreme poverty and human rights at: http://www.un.org/ga/search/view_doc.asp?symbol=A/70/274 The Special Rapporteur concludes that the existing approach taken by the Bank to human rights is incoherent, counterproductive and unsustainable. For most purposes, the World Bank is a human rights-free zone. In its operational policies, in particular, it treats human rights more like an infectious disease than universal values and obligations.

⁹³ Kevin Rudd: China’s Rise and a New World Order-26 Oct 2017 at: <https://www.youtube.com/watch?v=psErow4xalo>; Xinhua News Agency (28 Mar 2015). “China unveils action plan on Belt and Road Initiative”. The State Council of the People’s Republic of China. Retrieved 16 April 2018.

⁹⁴ Philip Alston - Keynote address to the Nordic Trust Fund for Human Rights and Development Annual Workshop on “The Way Forward”, The World Bank, Washington DC, 15 October 2014 at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15275&LangID=E>

⁹⁵ Idem note 94

protecting human rights through an enhanced human dimension, strengthening institutions of governance and democracy, empowering individuals and communities. However, in the body of the same document, the Bank emphasizes its own programmatic and consequential contribution to a broad spectrum of human rights “Whether they are called economic and social, or civil and political” stressing that the Bank is limited by its Articles of Agreement [to engage with human rights understood]. In particular, that in all its decisions, “only economic considerations shall be relevant.” Here the Bank noted a belief by “some” that this restriction prevents it from adequately confronting the issue of human rights. However, it then seems to try to counter this concern by highlighting the “Bank’s economic and social approach to development advances a comprehensive, interconnected vision of human rights that is too often overlooked” and that its lending decisions are based on “the quality of...project(s), and the effectiveness of the programs in reducing poverty...”⁹⁶

The Articles of Agreement, the World Bank’s [International Bank for Reconstruction and Development] founding legal instrument, establish several limitations on the Bank’s activities:⁹⁷

Article 4, Section 10

“Political activity prohibited - The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I”⁹⁸

⁹⁶ Development and human rights: the role of the World Bank p. cm. ISBN 0-8213-4340-8, 1998 at: <http://documents.worldbank.org/curated/en/820031468767358922/pdf/multi0page.pdf> ; While this belief may be the genuinely held intrinsic value belief of “some” at the Bank, the human rights community at large continues to find serious and chronic fault with the negative human rights impacts of the Bank’s activities and calls systematically for the Bank to engage with human rights; See also : Business & Human Rights Resource Centre, Rejecting the World Bank’s false choice between rights & development Natalie Bridgeman Fields & Siddharth Mohansingh Akali, Accountability Counsel at: <https://www.business-humanrights.org/en/rejecting-the-world-bank%E2%80%99s-false-choice-between-rights-development>

⁹⁷ IBRD Articles of Agreement, (As amended effective February 16, 1989) at <http://siteresources.worldbank.org>

⁹⁸ Idem note 97, Article 4, Section 10

Article 3, section 5(b)

“The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.”⁹⁹

In 2005, the Bank’s Legal Vice-Presidency’s clarified its approach to conditionality¹⁰⁰ referring to the IBRD and the IDA common article on the “Political Activities Prohibition”¹⁰¹ noting that:

“...conditionality in Bank-financed operations is based on economic, rather than political, considerations. In making decisions, the Bank views these factors impartially to achieve its purposes. However, this position does not imply that the Bank should completely ignore political implications or consequences when deciding whether to lend to a borrower...the Bank needs relevant knowledge of the political situation in the country involved and to appreciate underlying social and cultural factors to ensure that conditionality is suitable to country circumstances and the loan will achieve its objectives.”¹⁰²

The Bank’s legal opinion is further explained in a Special Report in 2006 where it states:¹⁰³

“The Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Bank’s mission.”¹⁰⁴

⁹⁹ Idem note 97, Article 3, section 5(b)

¹⁰⁰ “Review Of World Bank Conditionality: Legal Aspects Of Conditionality In Policy-Based Lending” at: <http://siteresources.worldbank.org/PROJECTS/Resources/40940-114615847489/LegalAspectsofConditionality.pdf>

¹⁰¹ Idem note 100, Article IV, Section 10 ; See also World Bank IDA Articles of Agreement, Article V, Section 6 at: <http://siteresources.worldbank.org/IDA/Resources/ida-articlesofagreement.pdf>

¹⁰² Idem note 100, See Section 5, paragraphs 50-55.

¹⁰³ Special Report: The Way Forward - Human Rights and the World Bank, Ana Palacio*, Development Outreach World Bank Institute at: <http://siteresources.worldbank.org/EXTSITETOOLS/Resources/PalacioDevtOutreach.pdf>

¹⁰⁴ Legal Opinion On Human Rights And The Work Of The World Bank, Senior Vice President And General Counsel, January 27, 2006 at: <http://opil.ouplaw.com/view/10.1093/law-oxio/e215.013.1/law-oxio-e215-regGroup-1-law-oxio-e215-source.pdf>

This opinion added substantive content to the 1998 document which had avoided giving content to the Bank's mission per se, limiting itself to "Strengthening...institutions, and making government more transparent" within a larger human rights dynamic.¹⁰⁵ Maher referring to Danino's opinion that the Articles of Agreement must be interpreted in light of the Bank's mission "to alleviate poverty through economic growth and social equity" noted the latter has an "obvious human rights component."¹⁰⁶ He also acknowledges the ongoing contestation of the Bank's role in human rights and believes the 2006 opinion is of unclear legal significance because it has not resulted in official Bank policy on decision-making on human rights.¹⁰⁷ Nonetheless, the Special Report does offer concrete pathways for progress explaining that the 2006 legal opinion is "permissive" and "allows leeway" to explore the Bank's proper role in relation to human rights.¹⁰⁸ In contrast, however, the Report underscores the contours of a very complex debate regarding the Bank and its human rights role in light of its diverse membership, challenges regarding universality of rights, and the critical issue that, with the current state of the law [Articles], human rights would "not be the basis for an increase in Bank Conditionalities", nor "present an obstacle for disbursement..."¹⁰⁹ Today, in 2019, this human rights and equity quandary within the Bank remains unresolved. This is evidenced in its 2017 major Safeguards document, the "Environmental and Social Policy for Investment Project Financing" which mentions human rights only in reference to its Articles of Agreement as outlined above.¹¹⁰ The

¹⁰⁵ Idem note 102, The World Bank document stated the Bank "has always taken measures to ensure that human rights are fully respected in connection with projects it supports" and that "creating the conditions for the attainment of human rights is a central and irreducible goal of development."

¹⁰⁶ Idem note 104. The same legal opinion referred in Note 104 and reproduced in Spring 2007 in "The Legal Aspects of the World Bank's Work on Human Rights" Roberto Dañino, Former Senior Vice President and General Counsel, The World Bank 2003-2006.

¹⁰⁷ Anthony Maher, Global Health Programme, 2017, Human Rights And The World Bank: Moral Leader Or Honest Broker at: <http://globalhealthgovernance.org/blog/2017/11/26/human-rights-and-the-world-bank-moral-leader-or-honest-broker>

¹⁰⁸ Idem note 103, In the Special Report, go to section on "The Bank's Legal Framework for Human Rights: the Way Forward." In this optic, the Special Report highlights human rights: (i) as legal principles which can provide a normative baseline against which to assess development policies and programming; (ii) can generate actionable legal obligations in some circumstances; and (iii) can inform the Bank's analytical work in the areas of governance or the legal empowerment of the poor.

¹⁰⁹ Idem note 103, Special Report at Introduction.

¹¹⁰ The WORLD BANK Environmental and Social Framework at: <http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf> -- And this despite the Bank's and IMF's best efforts to engage through soft advances such as the Tilburg-GLOTHRO Guiding Principles

joint United Nations-World Bank Pathways to Peace Initiative testifies to a similar and differentiated approach where, in this policy-think document, the UN talks of protecting and respecting human rights while the Bank explains how its efforts [financing] can contribute to the overall achievement of SDGs, but again without direct commitment to human rights.¹¹¹ Regarding the IMF, De Zayas, notes briefly that the IMF contributes to preconditions for the achievement of human rights through its economic and financial policies, which in recent context means applying “Washington Consensus” economics. He then notes that IMF must anticipate the consequences of the “conditionality” of its lending practices and integrate ex-ante human rights assessments so that its activities do not lead to violations of human rights.¹¹²

This hands off, human rights-free zone type approach is not exclusive to the World Bank and the IMF. The Articles of Agreement for the AIIB, and agreements establishing the NDB, the Asian Development Bank, the African Development Bank, and the Inter-American Development Bank all include similar formulations to the World Bank’s Articles with regard to limitations on political activities generating similar approaches on human rights generally, not to mention RTD in specific.¹¹³ However there are significant outliers where human rights conditionality in development aid is considered systematically in the political domain. They are: (i) the Council of Europe Development Bank [CEB] which focuses on solutions for refugees, internally displaced and migrants and conditions loan and grant applications on conformity with the political and

seeking positively to chart a future where human rights matter in development See: Tilburg-GLOTHRO Guiding Principles at: https://pure.uvt.nl/ws/portalfiles/portal/564925/TILBURG_.PDF

¹¹¹ Pathways for Peace Pathways for Peace, Inclusive Approaches to Preventing Violent Conflict, Main Messages and Emerging Policy Directions at: <https://openknowledge.worldbank.org/>

¹¹² A/70/274* Report of the Special Rapporteur on extreme poverty and human rights to the General Assembly, 2015, at: <https://undocs.org/A/70/274>

¹¹³ See Articles of Agreement of the AIIB, Article 31 (2) at: <https://www.aiib.org/en/about-aiib/basic-documents/articles-of-agreement/index.html> ; and Agreements Establishing: The NDB, Art 13 (e) at: <https://www.ndb.int/wp-content/themes/ndb/pdf/Agreement-on-the-New-Development-Bank.pdf> ; The African Development Bank, Article 38 (2) at: <https://www.afdb.org/en/documents/document/agreement-establishing-the-african-development-bank-2016-edition-92045/> ; The Inter-American Development Bank, Section 5 (f) at: <https://sector.iadb.org/law-library/documents/agreement-establishing-inter-american-development-bank> ; The Asian Development Bank Art 36 (2) at: <https://www.adb.org/sites/default/files/institutional-document/32120/charter.pdf> .

social aims of the Council of Europe¹¹⁴ based on the European Convention on Human Rights;¹¹⁵ (ii) the European Investment Bank [EIB] and European Reconstruction Development Bank [ERDB] the world's largest development banks whose political human rights based conditionality has developed over time with the Yaoundé, Lomé and Cotonou Agreements¹¹⁶ and whose policies reflect European Union law and policy based on the Charter of Fundamental Rights of the European Union influence conditionality relating to democratization and human rights in recipient countries.¹¹⁷ In particular, Articles 8 and 9 of the Cotonou Agreement give robust legal certainty to both dialogue around mutual agreement on the human rights and political dimensions of development aid, and on direct human rights conditionality of aid.¹¹⁸

More broadly, OSCE countries show a broad commitment to align their foreign development aid to the Agenda 2030 objective to “leave no one behind”.¹¹⁹ However, while conditionality is an ongoing source of research and analysis, recent study suggests that while it can have a limited impact if properly designed, the evolving tendency is more towards “Softer mechanisms” based on learning and persuasion as alternatives to conditionalities.¹²⁰ In parallel, the EU, the World

¹¹⁴ Council of Europe Development Bank - Articles of Agreement, Article XIII, (c) at:

<https://coebank.org/en/about/basic-legal-texts/>

¹¹⁵ European Convention on Human Rights at: https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹¹⁶ Political Conditionality in European Union Development Assistance, Assessing effectiveness and Consistency, Selma Roth, Masters in Advanced European and International Studies [2008-2009] at: <https://www.ie-ei.eu/IE-EI/Ressources/file/memoires/2009/ROTH.pdf> See Conclusions on pages 38, 51,81 and 101. See also,

¹¹⁷ Charter Of Fundamental Rights Of The European Union At: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en

¹¹⁸ Cotonou Agreement [or “Partnership Agreement Between The Members Of The African, Caribbean And Pacific Group Of States Of The One Part, And The European Community And Its Member States Of The Other Part] Articles 8 on Political dialogue and Article 9 on Essential elements regarding human rights, democratic principles and the rule of law, and fundamental element regarding good governance at: http://eeas.europa.eu/archives/delegations/namibia/documents/eu_namibia/cotonou-agreement_en.pdf: See also: Anwar SHAH, 2017 Brookings Institution, “Development assistance and conditionality: Challenges in design and options for more effective assistance, 28 April 2017 at: <https://www.oecd.org/cfe/regional-policy/Shah-Development-assistance-and-conditionality.pdf>

¹¹⁹ OSCE Development Co-operation Report 2018: Joining forces to leave no one behind at: https://www.oecd-ilibrary.org/development/development-co-operation-report-2018_dcr-2018-en ; OSCE targeting support to mid-income and poorer countries while focusing on people and groups to eradicate poverty, reduce inequality, promoting social and economic inclusion and respect for human rights; See also MC.DOC/1/06 Organization for Security and Co-operation in Europe 1 November 2006, Ministerial Council, Rules Of Procedure Of The Organization For Security And Co-Operation In Europe at: <https://www.osce.org/mc/22775>

¹²⁰ Lee Mizell, April 2017, Conditionality in practice: Emerging lessons for public investment, The Graduate Institute of International and Development Studies, Geneva, see Conclusion on page 17 at:

Bank, IMF and OSCE foreign development aid policies are seen by some as being ideologically [Westphalian] in favour of and promotional of the free market-based economics of the “Washington Consensus.”¹²¹ They are perceived to represent their shareholders' interests in the first place, and to be pushing a Western-based global development discourse ideologically, to attain their geopolitical interests.¹²² Critiques of the Washington Consensus hold, inter alia, that free trade is not always in the best interest of developing economies; that low government borrowing is not always appropriate; that State investment in infrastructure and the public sector under an interventionist approach is often needed as a driver of development, as evidenced by Chinese investments in developing countries in recent years; and that while privatization can be a strong development driver, it should not blindly apply to key public sector industries.¹²³ As Lopez notes, internal debate within IFIs including the IMF and World Bank especially following the financial crisis of 2008 gave rise to a post-Washington-Consensus reflection, broadening the policy debate and a return towards Keynesian economics.¹²⁴

In this regard, Kilby notes that China openly opposed the post-Washington Consensus with its “Beijing Consensus” espousing “equitable growth, positive social change, self-determination and

https://www.oecd.org/cfe/regional-policy/Mizell_Conditionalities_Emerging-lessons-for-public-investment.pdf - Approaches are more geared towards: : (a) narrowing the gap in priorities and knowledge prior to establishing conditions so as to improve the likelihood of their uptake; (b) limiting conditionalities where complex reforms are required; (c) emphasizing the importance of recipient ownership of proposed changes; and (d) taking account of capacity constraints and opportunities in recipient States. In this context, the use of: (e) “Softer mechanisms” based on learning and persuasion are recommended with, or as alternatives to, conditionalities.

¹²¹ John Williamson: The Washington Consensus as Policy Prescription for Development Senior Fellow, Institute for International Economics at: <https://piie.com/publications/papers/williamson0204.pdf>; See also Tejvan Pettinger Washington consensus – definition and criticism at:

<https://www.economicshelp.org/blog/7387/economics/washington-consensus-definition-and-criticism/>

¹²² Ivan Lesay, 2013, Discoursing development: the case of the European Investment Bank, Institute of Economic Research, Slovak Academy of Sciences, Slovakia, Nova econ. vol.23 no.2 Belo Horizonte May/Aug. 2013 at: <http://dx.doi.org/10.1590/S0103-63512013000200007>

¹²³ Idem note 121 - Tejvan Pettinger “Washington consensus – definition and criticism at:

<https://www.economicshelp.org/blog/7387/economics/washington-consensus-definition-and-criticism/>

¹²⁴ Idem note 46 [Carlos Lopes 2012] at page 7 and generally - That States would again intervene to correct market failures, that some industries, particularly infant ones, would require a period of State protection and that different approaches were now on the table in both east and west which required both instructional policy reform on a global scale.

heavy State control.”¹²⁵ He also notes that while historically, the US projection of aid under a liberal economic and political agenda was matched by China’s foreign aid policy to become a development leader in the South, China will henceforth organically fill any gaps left by the retreat of the Trump Administration from foreign development.¹²⁶ Here he stresses the West has lost leverage globally with its neo-liberal conditionality to social and gender justice, human rights and environmental norms, to China’s policy of noninterference and no-strings-attached policy to aid. He identifies the bringing together of all major world actors around the table as equal partners as **THE** challenge ahead in: (i) accepting local sovereignty; and (ii) only then seeking to apply what are accepted human rights and other global norms in those [specific] contexts.¹²⁷

It is good here to recall that earlier proposals for a Dialogue of Civilizations regarding human rights including the RTD, and IL generally, and the parallel calls for discussion on NIEO, are timely and necessary to address concerns expressed inter-alia by the UN Secretary General regarding a new world order based on cooperation. An immediate thought is how appropriate a forum IFIs might be to launch such Dialogue given their much diversified memberships, complex interactions across the globe on a daily basis,¹²⁸ and noting that half of MDBs have some form of institutionalized safeguards mainly on environmental protection and sustainable development.¹²⁹ However, while cooperation and dynamics between banks could, with vision,

¹²⁵ Patrick Kilby 2017, China and the United States as Aid Donors, Past and Future Trajectories, Policy Studies East-West Centre at <https://www.eastwestcenter.org/system/tdf/private/ps077.pdf?file=1&type=node&id=36374> See pages 1-11

¹²⁶ Idem note 125 – [Patrick Kilby] 2017 at page 27

¹²⁷ Idem note 125– [Patrick Kilby] 2017 at pages 24-37

¹²⁸ A Guide to Multilateral Development Banks 2018 at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12274.pdf> - The World Bank (IBRD) has 189 members covering nearly every country in the world. In Africa, many of the sub-regional banks are associated with sub-regional organizations while 40 out of 54 African countries are shareholders of an African sub-regional MDB. All 54 African countries are members of the AfDB. In Latin America and the Caribbean 32 out of 33 countries are shareholders of at least one sub-regional MDB. Most MDBs including the AIIB and NDB have non-resident boards of directors and many regional and sub-regional banks also include non-regional members. For instance, the AIIB headquartered in Beijing has the second largest global membership [86] with a Board of Directors and a Senior Management Team of diverse nationalities from around the world; See also AIIB governance at: <https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html>;

¹²⁹ Stewart M. Patrick 2018, AIIB: Is the Chinese-led Development Bank a Role Model? at: <https://www.cfr.org/blog/aiib-chinese-led-development-bank-role-model> - Recently the Articles of the AIIB were amended to give exclusive decision power on loans to President Li. This had raised heads as to why? ; Also Idem note 128 on - AIIB governance - AIIB whose Board of Governors is also staffed by UK and German nationals.

catalyze positive change for human rights/RTD, the underlying economic philosophies on market driven free enterprise economics of the West, versus the communitarian ESC rights approaches of the East, currently represents a civilizational flash-point which needs attention if progress is to be made on RTD.

Transnational Corporations [TNC]

While TNCs contribute vastly to human development, the global economy and globalization, their conduct often raises grave environmental and human rights concerns in many countries around the world.¹³⁰ Following earlier efforts by Mary Robinson and Koffi Annan through the Global Compact, the OECD “Guidelines for Multinational Enterprises” and the “Norms Responsibilities of transnational corporations and other business enterprises with regard to human rights,” the [western-based] international business community stressed that “If put into effect, the [norms] would undermine human rights, the business sector of society, and the right to development.”¹³¹

¹³⁰ See The UN “Protect, Respect and Remedy” Framework for Business and Human Rights at <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>

¹³¹ Mary Robinson, “The Business Case for Human Rights,” Visions of Ethical Business, Financial Times Management, 18 December 1998; available at <http://www.burmalibrary.org/reg.burma/archives/199812/msg00273.html>; Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, U.N. ESCOR, 55th Sess., 22d mtg., at Agenda Item 4, U.N. Doc. E/CN.4/Sub2/2003/12/Rev.2 (2003), <http://www1.umn.edu/humanrts/links/norms-Aug2003.html> ; Organisation For Economic Co-Operation And Development, OECD, Guidelines For Multinational Enterprises 15 (2000) at: <http://www.oecd.org/dataoecd/56/36/1922428.pdf> ; UN Commission's decision re Norms - 20 Apr 2004, decision 2004/116 at <https://business-humanrights.org/en/united-nations-sub-commission-norms-on-business-human-rights-explanatory-materials> ; Juli Campagna, United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers, 37 J. Marshall L. Rev. 1205 (2004) Available at: http://scholarlycommons.law.hofstra.edu/faculty_scholarship/682 ; Joint views of the IOE & ICC on the UN human rights norms for business at <https://business-humanrights.org/en/joint-views-of-the-ioe-icc-on-the-un-human-rights-norms-for-business> ; UN Commission on Human Rights Resolution E/CN.4/RES/2005/69 at <http://www.refworld.org/docid/45377c80c.html> ; Efforts by Mary Robinson and Koffi Annan around 2000 saw the Global Compact call on corporations to embrace universal principles concerning human rights, labor standards and the environment”. Collaboration with OECD produced “Guidelines for Multinational Enterprises” while in 2003, the Human Rights Sub-Commission adopted “Norms Responsibilities of transnational corporations and other business enterprises with regard to human rights” However, these norms were quickly abandoned by the Human Rights Commission on the basis that they had “no legal standing.” In parallel, the international business community virulently opposed the draft norms and both the International Chamber of Commerce [ICC] and the International Organization of Employers [IOE] announced that “If put into effect, they [norms] would undermine human rights, the business sector of society, and the **right to development**” and underscored the State as “the duty-bearer of human rights obligations, not private persons.”

In 2008, the HRC adopted the “Protect, Respect and Remedy” Policy Framework and Guiding Principles [GP] proposed by SRSG on Business and Human Rights, Professor John Ruggie around three core principles: (i) the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; (ii) the corporate responsibility to respect human rights, i.e. to act with due diligence to avoid infringing the rights of others; and (iii) the need for greater access by victims to effective remedies, judicial and non-judicial.¹³² The GPs included no new international law obligations and did not undermine legal obligations of States under IHRL.¹³³ Despite the current state of the law where States are the primary duty bearers for human rights, in 2014, HRC Resolution 26/9 established an “open ended intergovernmental working group” to draft an international legally binding instrument to regulate, in IHRL, activities of TNCs and other business enterprises.¹³⁴ However, while some including the EU supported a binding treaty, many opponents highlighted that a treaty would abandon States’ accountability for human rights violations by individuals and corporations within their borders -- as applied by the GP framework. Professor Ruggie also cautioned treaty proponents against “... largely symbolic gestures,”¹³⁵ The 2016 sitting of the Forum on Business

¹³² Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises – Overview at <http://www.ohchr.org/EN/Issues/Business/Pages/SRSGTransCorpIndex.aspx>; The SRSG liaised closely with the human rights working group of the Global Compact in order to identify, exchange and promote best practices and lessons learned. In his report to the HRC of 27 May 2011, the SRSG annexed the Guiding Principles [GPs] on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework which are grounded in: (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

¹³³ Implementing the United Nations “Protect, Respect and Remedy” Framework at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf See General Principles page 2. See also Press Statement CIVICUS urges the international community to address human rights abuses by corporations at <http://www.civicus.org/index.php/media-resources/media-releases/2574-press-statement-civicus-urges-the-international-community-to-address-human-rights-abuses-by-corporations>

¹³⁴ United Nations A/HRC/RES/26/9, Human Rights Council, Twenty-sixth session, Agenda item 3 at: <https://www.ihrb.org/pdf/G1408252.pdf>; See also Nader Tadros and People’s Advocacy (2009). *Right Holders and Duty Bearers*. UNICEF Wiki. Retrieved 11:31, 18 April, 2019 from http://www.advocate-for-children.org/doku.php?id=advocacy:rights_based_approach:rights_holders_duty_bearers&rev=1257466824.

¹³⁵ The Proposed Business and Human Rights Treaty: Four Challenges and an Opportunity, Sara McBrearty, Harvard International Law Journal / Vol. 57 Online Symposium at http://www.harvardilj.org/wp-content/uploads/McBrearty_0615.pdf; The EU and the International Committee of Jurists [ICJ] supported a treaty – See Proposals For Elements Of A Legally Binding Instrument On Transnational Corporations And Other Business Enterprises October 2016, at <https://www.icj.org/wp-content/uploads/2016/10/Universal-OEWG-session-2-ICJ-submission-Advocacy-Analysis-brief-2016-ENG.pdf>; See also Implementation of the UN Guiding Principles on

and Human Rights noted that in adopting the SDGs, the General Assembly mentioned the GPs only in passing as “they were less important than ensuring that business engage in the Goals on any terms.” It held that companies are driven “exclusively by considerations of business risk or opportunity” not human rights obligations. It also stressed the (controversial) need for an international legally binding instrument to hold business accountable.¹³⁶ Interestingly, the 2018 sitting of this Forum had already advanced to discussion of a “draft zero” of this legally binding instrument and recommended to continue dialogue based on receiving commentaries on the draft. Of substantive note here however is the call for clarification and precision of the language in the draft, in particular “the articles covering the scope, definitions, jurisdiction, applicable law, rights of victims, legal liability and international cooperation...” in effect, on a lot of key substantive content.¹³⁷ In the meantime, provisions in treaties which protect the environment are few and environmental customary law is weak, making “litigation before international tribunals largely pointless...”¹³⁸ The tendency therefore has been to seek redress for environmental harms through the more robust architecture of international human rights law before International Tribunals and domestic courts which can exercise extraterritorial jurisdiction

Business and Human Rights - The Directorate-General For External Policies, Policy Department page 38, at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU\(2017\)578031_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf)

¹³⁶ Human Rights Council, Forum on Business and Human Rights, 14–16 November 2016 Fifth session of the Forum on Business and Human Rights: summary of discussions A/HRC/FBHR/2016/2 at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/FBHR/2016/2 The Forum addressed the impact of agribusiness and extractive industries, and the “apparent paradox where investments geared towards fighting climate change, such as renewable energy projects, had an adverse impact on indigenous peoples”. It noted that the main barrier to accountability and access to remedy was the implementation of already existing judicial protection of human rights at the national level and the promotion of the Guiding Principles. It further stressed the well-trodden issue of complex corporate structures which continue to protect companies from the consequences of adverse human rights impact, including legal accountability. It also noted: (a) inadequate enforcement of relevant local laws; (b) The persecution of victims of business-related human rights abuses tended to discourage victims from coming forward; (c) Access to legal representation was a major barrier for victims; (d) Operational-level grievance mechanisms were not enough for cases addressing situations of serious human rights violations.

¹³⁷ A/HRC/40/48 - Report on the fourth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, 2 January 2019 at: <https://www.business-humanrights.org/sites/default/files/documents/IGWG-report-4th%20session.pdf>; See paragraph 13.

¹³⁸ See Climate Change and International Human Rights Litigation: A Critical Appraisal Eric A. Posner University Of Pennsylvania Law Review [Vol. 155:1925], page 1927 and footnote 6, See also Human Rights And The Environment, Icelandic Human Rights Centre at <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-in-relation-to-other-topics/human-rights-and-the-environment>

for the relevant offenses.¹³⁹ But successes for victims has been very limited as evidenced by key cases of litigation including, among others, the Ogoni trials, Kiobel, TriFigura and other cases pursued under the US Alien Torts Act and EU Regulation No 44/200120 –[Brussels I recast].¹⁴⁰ As Kohl notes, international law does not get its “proverbial hands dirty by getting involved in the domestic law quarrels between populations and global corporations.” She explains that “territoriality is deeply embedded in what may appear to be relatively insignificant procedural or technical domestic rules” but that these rules make judges the enforcers of the territorial State, and de facto border-guards to determine payment obligations and accountability (or not) across borders. She holds this tends to use the law to “ring-fence local capital from foreign claims of

¹³⁹ See 2001 landmark decision of the African Commission on Human and Peoples’ Rights -- The Social and Economic Rights Action Centre et al. v. Nigeria, Communication 155/96, paragraph 69 where the Commission found “...the Federal Republic of Nigeria in violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter”; See also See footnote 12, The UN ‘Norms on the Responsibility of Transnational Corporations and Other Business Enterprises With Regard To Human Rights’: A Requiem, Deakin Law Review [2012] Volume 17 No 1. “Such approaches were prevalent within the UN Draft Code of Conduct for Transnational Corporations (UNCTC, Transnational Corporations, Services and the Uruguay Round (United Nations, 1990) 231–43

¹⁴⁰The Application Of The Local Remedies Rule Under The African Charter On Human And Peoples’ Rights: With A Case Study Of Communications From The Niger Delta, Bernadine M. Agocha, Institute Of Comparative Law McGill University, Montreal, November 2009 at: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1504191643501~358; (ii) Kiobel, Individually And On Behalf Of Her Late Husband Kiobel, Et Al. V. Royal Dutch Petroleum Co. Et Al. Certiorari To The United States Court Of Appeals For The Second Circuit. No. 10–1491. Argued February 28, 2012—Reargued October 1, 2012—Decided April 17, 2013; (iii) Amnesty International: The Toxic Truth: About A Company Called Trafigura, A Ship Called The Probo Koala, And The Dumping Of Toxic Waste In Côte D’Ivoire at: <https://www.amnesty.org/fr/documents/AFR31/002/2012/en/>; (iv) Aguinda v. Texaco, Inc., 142 F. Supp. 2d 534, 554 (S.D.N.Y. 2001); See also Transnational Litigation And Institutional Choice, Cassandra Burke Robertson, Boston College Law Review [Vol. 51:1081]. See Introduction - on the Chevron-Texaco case; (v) His Royal Highness Okpabi V Royal Dutch Shell Plc, Lucky Alame V Royal Dutch Shell Plc [2017] Ewhc 89 (Tcc); Jurisdiction And International Environmental Group Actions at <https://internationalandtravellawblog.com/2017/02/12/his-royal-highness-okpabi-v-royal-dutch-shell-plc-lucky-alame-v-royal-dutch-shell-plc-2017-ewhc-89-tcc-jurisdiction-and-international-environmental-group-actions/>; ; See also legislation and case law as follows: 28 U.S. Code § 1350 - Alien’s action for tort “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” Available at <https://www.law.cornell.edu/uscode/text/28/1350> ; Article 4 Brussels I Regulation, Article 6 Recast. See The Brussels I Recast - A guide to the changes to the EU jurisdiction regime, Linklaters 2014 at [www.linklaters.com/.../141118 Recast Briefing Newsletter.pdf](http://www.linklaters.com/.../141118%20Recast%20Briefing%20Newsletter.pdf) ; EU Regulation No 44/200120 as continued in Brussels I recast. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R0044:EN:HTML> ; Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88 (2d Cir. 2000) ; Kiobel, Individually And On Behalf Of Her Late Husband Kiobel, Et Al. V. Royal Dutch Petroleum Co. Et Al. Certiorari To The United States Court Of Appeals For The Second Circuit. No. 10–1491. Argued February 28, 2012—Reargued October 1, 2012—Decided April 17, 2013; Trafigura v Cote D’Ivoire 2006; His Royal Highness Okpabi V Royal Dutch Shell Plc, Lucky Alame V Royal Dutch Shell Plc [2017] Ewhc 89 (Tcc); Jurisdiction And International Environmental Group Actions at <https://internationalandtravellawblog.com/2017/02/12/his-royal-highness-okpabi-v-royal-dutch-shell-plc-lucky-alame-v-royal-dutch-shell-plc-2017-ewhc-89-tcc-jurisdiction-and-international-environmental-group-actions/>

entitlement...”¹⁴¹ In juxtaposition, Emeseh, Ako, Okonmah, Obokoh and Ogechukwu explain the dominant neoliberal policy of deregulation, liberalization and privatization has diminished powers of the State to play an active role in the regulation of financial market activities. They hold that economic agents [TNCs] are able to manipulate the machinery of government to impose restrictions on market activities for their proper gains i.e. profit. They note this can also diminish the regulatory power of States with regard to the environmental, social and human rights impact of TNC activities.¹⁴² Other constraining factors include the prevailing positivist Westphalia-based paradigm that States are subjects of international law, and TNCs are not. TNCs have no international legal personality and so cannot be pursued directly for violations of international human rights law. As such, it falls to States to regulate TNC activities.¹⁴³ More optimistically however, attitudes of TNCs towards human rights and the environment may, according to Edgecliff-Johnson, be undergoing an altruistic transition from a Friedmanian fixation on profit, to requiring “a positive contribution to society, benefiting customers and communities as well as shareholders” as the possible foundation for a new model for capitalism based on the watchwords of purpose, inclusion and sustainability. Why he asks “should the citizens of this world keep companies around whose sole purpose is the enrichment of a few people?”¹⁴⁴ Only time will tell if this is simply lip service to feel-good initiatives or a shift of more solid nature.

The Context for Sustainable Development

The International Commission of Jurists [ICJ] in 2016 declared a new urgency to counter “a global assault on the concept of the rule of law and respect for the international human rights legal order.”¹⁴⁵ Applauding the international community for adopting Sustainable Development Goal

¹⁴¹ Uta Kohl, 2018, Territoriality and Globalization, Oxford Handbook on Jurisdiction in International Law' at: https://www.academia.edu/37537020/Territoriality_and_Globalization

¹⁴² Emeseh, Engobo and Ako, Rhuks Temitope and Okonmah, Patrick and Obokoh, Lawrence Ogechukwu, Corporations, CSR and Self Regulation: What Lessons from the Global Financial Crisis? (2009). German Law Journal, Vol. 11, No. 2, pp. 230-259, 2009. Available at SSRN: <https://ssrn.com/abstract=1631028>, See pages 234-235 in particular.

¹⁴³ Claire Cutler, 2001, Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy, Review of International Studies, Vol 27, No. 2 (April 2001- pp 133-150

¹⁴⁴ Andrew Edgecliffe-Johnson January 4, 2019, Beyond the bottom line: should business put purpose before profit? at: <https://www.ft.com/content/a84647f8-0d0b-11e9-a3aa-118c761d2745>

¹⁴⁵ ICJ Annual Report 2016 at <https://www.icj.org/ici-annual-report-2016-now-online/> see Introduction.

16, it recognized Rule of Law as fundamental to sustainable development around the globe and underlined the need to develop the nexus between development and the legal framework of human rights.¹⁴⁶ In tandem, political leaders [e.g. Merkel, Putin, Rudd, and Kissinger] across the world also advanced an appetite for new economic approaches to address social and economic inequities.¹⁴⁷

On 9 January 2018, Professor Schwab of The World Economic Forum [WEF] cited evidence to the New York Times of a fractured world characterized by polarization. He then advanced a model of “equitable globalization” which would be able to preserve democracy as the fundamental element of a future global management model.¹⁴⁸ In Davos on 19 January 2018, Professor Schwab interviewed UN Secretary General, Antonio Guterres, who warned listeners of today’s “dangerous world” catalyzed by fragile states, institutions and societies with protracted and new conflicts combining terrorism and terrible violations of human rights. Highlighting evolving megatrends in population growth and movements of people, climate change, food insecurity and water scarcity, he expressed great concern that the United Nations and the greater international community are currently unable to either prevent or resolve conflicts because of the unclear global power relations which are unfolding. Mr. Guterres called for:

¹⁴⁶ Idem note 145 [ICJ] Annual Report 2016 at Introduction -- It also emphasized rising anger regarding globalization and the dangers of global “profit-making businesses with tremendous privileges” and the need to hold them to account through the elaboration of an international treaty on business and human rights.

¹⁴⁷ International Business Merkel, at Davos, calls for a “global economic charter” By Carter Dougherty Jan. 30, 2009 At: <https://www.nytimes.com/2009/01/30/business/worldbusiness/30iht-davos.4.19817885.html> Angela Merkel advocated for ‘a new charter for a global economic order’ based on multilateral solutions instead of a unilateral, protectionist course of action; Wall Street Journal: Putin Speaks at Davos, Updated Jan. 28, 2009 at: <https://www.wsj.com/articles/SB123317069332125243> Vladimir Putin called for free enterprise and strengthened global regulation based on international law and multilateral agreements and refuted both isolationism and, interestingly, excessive intervention by the State in economic activity; Kevin Ruud denounced “unfettered capitalism” and called for a new era of “social capitalism” in which government intervention and regulation feature heavily - Sydney Morning Herald, in its article “Time for a new world order: PM at: <https://www.smh.com.au/national/time-for-a-new-world-order-pm-20090131-gdtbtm.html> ; Henry Kissinger advised the US and its potential partners to seize the opportunity to transform a moment of crisis into a vision of hope by building and securing an international order together - HENRY A. KISSINGER JAN. 12, 2009. The chance for a new world order. New York Times at: <https://www.nytimes.com/2009/01/12/opinion/12iht-edkissinger.1.19281915.html>

¹⁴⁸ WEF's Klaus Schwab: What to Expect in 2018 at <https://www.wsj.com/video/wef-klaus-schwab-what-to-expect-in-2018/39400C32-CD00-4ECC-BD64-853C7D0607B0.html>

“the enhancement of a new generation of partnerships... for an inclusive and sustainable development - the best way to prevent crises and conflicts in today’s world.” stating his belief that “only with a very strong dialogue and partnership between governments, international organizations and the private sector, it would be possible to transform them in instruments that would allow for fantastic increase in the well-being of people...” ¹⁴⁹

Regarding shared values of society after the cold war, Mr. Guterres emphasized that previously in Europe, a multipolar system without multilateral governance had led directly to the WWI.¹⁵⁰ He warned that today’s multilateral governance mechanisms including the UN are weak, stressing that prosperity requires a “Cooperative World” with a cementing ingredient of multilateral governance by the future key players to see what type of synthesis can be put together in a positive way where the UN Charter and human rights are not compromised by questions of national sovereignty.¹⁵¹

Muggah and Tiberghien told the WEF that current liberal order built by the US and its allies around the UN, the IMF, World Bank, WTO, NATO, the G20 and a thicket of treaties and agreements is in an “advanced state of meltdown” where profound instability needs world leaders to engage in collective action to set rules for the road¹⁵² The WEF Report 2018 “Creating

¹⁴⁹ Secretary General António Guterres, Remarks at the special session on "Cooperation for Peace: Tackling the Root Causes of Global Crises" at <https://www.un.org/sg/en/content/sg/speeches/2017-01-19/secretary-generals-cooperation-peace-remarks>

¹⁵⁰ Idem note 149, See also Birthe Hansen Bertel Heurlin, The New World Order – 2000 - Contrasting Theories, Palgrave Macmillan, see chapter 5: The Unipolar World Order and its Dynamics at: https://link.springer.com/chapter/10.1057/9781403905277_5; Macey, Jonathan R. and Miller, Geoffrey P. (1992) "The End of History and the New World Order: The Triumph of Capitalism and the Competition between Liberalism and Democracy," Cornell International Law Journal: Vol. 25: Iss. 2, Article 1 at: <http://scholarship.law.cornell.edu/cilj/vol25/iss2/1> at footnote 13 citing Francis Fukuyama, The End Of History And The Last Man (1992) - “As mankind approaches the end of the millennium, the twin crises of authoritarianism and socialist central planning have left only one competitor standing in the ring as an ideology of potential universal validity: liberal democracy Two hundred years after they first animated the French and American revolutions, the principles of liberty and equality have proven not just durable but resurgent.”

¹⁵¹ Idem note 150 [UNSG Guterres]

¹⁵² Robert Muggah and Yves Tiberghien, 2018 – “It’s Time to get used to a New Global Order with China and the U.S. at its centre – at : <https://ipolitics.ca/article/time-get-used-new-global-order-china-u-s-centre/> - Muggah and Tiberghien claim that three competing versions of future world order “crashed together” in Davos: a full-scale US retreat from the current order; Chinese leaders who proposed a new global economic system built around Beijing; and maintaining the current liberal order proposed by Canada Prime Minister Trudeau and French President Macron.

a shared future in a fractured world” starts with an upbeat tone on global economic recovery since the 2008 citing IMF predictions of growth and financial optimism for the immediate period, particularly for top MNCs.¹⁵³ However, it quickly reveals a reality that lack of social inclusion and environmental sustainability has resulted in no wage increases in many parts of the world with massive inequality between rich and poor.¹⁵⁴ With this as background, later in 2018, UNSG Guterres called on developed countries to support ECOSOC and the HLPF to implement the NIEO 1974 Declaration. However, he underlined that trade conflicts [e.g. US-China] and an absence of adequate safeguards and mitigation measures against the pace of monetary policy adjustments in the US, and increasing levels of external debt could undermine progress towards a multilateral, rule-based and equitable global trade regime. He lauded South-South cooperation, in particular, China’s Belt and Road Initiative as an important catalyst for boosts in infrastructure investments in both developing countries of the South, and in some countries in Europe. Finally, he warned that exceptional stimulus measures employed by the central banks in developed countries after the financial crisis in 2008–2009 [i.e. State intervention to create demand and recovery in their economies following Keynesian doctrine] which, because of the need for payback [or “releveraging” after a long period of “deleveraging”], may lead to even more increases in State

¹⁵³ Global Agenda, Davos-Klosters, Switzerland 23-26 January, 2018, World Economic Forum Annual Meeting, Creating a Shared Future in a Fractured World at: http://www3.weforum.org/docs/WEF_AM18_Report.pdf

¹⁵⁴ Idem note 153 page 23 referring to Oxfam Report, Reward work, not wealth. To end the inequality crisis, we must build an economy for ordinary working people, not the rich and powerful. https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-reward-work-not-wealth-220118-en.pdf; See also Oxfam Press Release “Richest 1 percent bagged 82 percent of wealth created last year - poorest half of humanity got nothing” at <https://www.oxfam.org/en/pressroom/pressreleases/2018-01-22/richest-1-percent-bagged-82-percent-wealth-created-last-year> - at Dedication and Foreword https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-reward-work-not-wealth-220118-en.pdf ; The report highlights the challenge is to find ways to reduce extreme poverty through increasing people’s rights, and balancing ecological and economic systems that sustain life, and sustain wealth.” Declaring there must be “justice; fair use of the world’s natural resources; a global economy that reduces inequality; (and) a world that does not discriminate against women or minorities” it insists the most effective way to meet these objectives lies in “people demanding their rights to livelihoods and decent work, and working together to increase living standards and reduce vulnerability”. The report, noted that reducing inequality is now high on the agenda of global institutions and world leaders through SDG 8 and 10 and that right to be heard and to have a recognized identity are also a fundamental part of human well-being and note that all these rights are explicitly grounded in the UDHR as well as relevant Treaties and Covenants. It also declares that the answer is simple. There must be “justice; fair use of the world’s natural resources; a global economy that reduces inequality; (and) a world that does not discriminate against women or minorities.” It insists the most effective way to meet these objectives lies in “people demanding their rights to livelihoods and decent work, and working together to increase living standards and reduce vulnerability”.

debt and a rise in asset prices as countries scramble to meet these loans. This, he stated, represents the greatest risk to the global economy (*which directly impacts RTD*) from 2018 onward despite that conditions for investment are now favorable.¹⁵⁵

The last paragraphs represent a glimpse of the operational context within which future efforts toward realizing RTD must take place. It is therefore instructive to look at a 2016 summary status of RTD by former High Commissioner for Human Rights, Navi Pillay, on the 20th anniversary of the Declaration on the RTD where she stated:

“We live in challenging times. Across the globe, millions are suffering the merciless, often devastating, effects of the many global crises of our age. The global financial and economic crisis, the food crisis, the energy crisis and the climate crisis have converged in a multi-front assault on human dignity. And our institutions of governance, at both the global and national levels, have been at best negligent, and at times complicit, in this onslaught. [...] This was not the vision of [...] the Declaration on the Right to Development [...]. A debate has been raging in the halls of the United Nations and beyond. On one side, proponents of the right to development assert its relevance (or even primacy) and, on the other, sceptics (and rejectionists) relegate this right to secondary importance, or even deny its very existence. Unfortunately, while generating plenty of academic interest and stimulating political theatre, that debate has done little to free the right to development from the conceptual mud and political quicksand in which it has been mired all these years.”¹⁵⁶

Looking forward, the High Commissioner said the challenge is to move beyond the myths, distortions and misunderstandings that plagued RTD since “its codification” in 1986. She

¹⁵⁵ A/73/290 Towards a New International Economic Order, Report of the Secretary-General 2018 at: <https://www.un.org/development/desa/dpad/publication/2018-reports-of-the-secretary-general-to-the-general-assembly/>

¹⁵⁶ Navi Pillay, High Commissioner for Human Rights, HR/PUB/12/4, United Nations Publication, Sales No.ISBN-13: 978-92-1-154194-6, eISBN-13: 978-92-1-055972-0, © 2013 United Nations at: https://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf See Foreword

emphasized RTD prescribes the formulation for national and international development policies, effective international cooperation and reform, and the removal of obstacles to development including human rights violations. Thus, she stressed, that “if you do not believe” RTD is codified in the UN Declaration, is a universal right with human beings as the right holders and governments as duty bearers, that everyone has an entitlement to participate in, contribute to and enjoy development, then “ you will know that you have left the realm of human rights analysis, and entered into a geopolitical boxing match that uses the right to development as a proxy for other issues that have long complicated relations between North and South.”¹⁵⁷

In this same optic, HRC Resolution 33/14 of 2016 on the RTD decided in paragraph 13, c, to inter alia:

“finalize consideration of the criteria and operational sub-criteria...in relation to the elaboration of a comprehensive and coherent set of standards for the implementation of the right to development, and shall also take appropriate steps to ensure respect for the practical application of these standards, which could take various forms, including guidelines on the implementation of the right to development, and evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement”¹⁵⁸

A close reading of this paragraph reveals that a legally binding standard could evolve from a more general standard setting exercise for the implementation of RTD. OHCHR speaks to this conditional perspective in its Factsheet 37 stating, inter alia, that development has been and continues to be understood as a primarily economic process measured by GNP, ignoring manifestations of economic policies whose net yields are “rising poverty, growing inequalities, and unprecedented economic, social, cultural, political, environmental and climate crises.”¹⁵⁹

¹⁵⁷ Idem note 156 [Navi Pillay] at Foreword

¹⁵⁸ A/HRC/RES/33/14, 5 October 2016, Resolution adopted by the Human Rights Council on 29 September 2016 33/14. The right to development at: <https://undocs.org/EN/A/HRC/RES/33/14>

¹⁵⁹ Frequently Asked Questions on the Right to Development, Factsheet No. 37, United Nations High Commissioner for Human Rights at: https://www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf See Introduction

This, it is emphasized here, is one of the crucial challenges in implementing RTD i.e. how to better focus on “economic, social, cultural and political development with people at its centre” to offer a more informed effective approach in future.¹⁶⁰

And so continues the now more than 30 years’ politico-economic war on RTD. The question is if it too will have its Westphalia-type-peace moment any time soon? Ramcharan writing in 2017 notes that both development [SDGs] and human rights [RTD] urgently require reform and modernization with new thinking in which Global Dialogue on the question of the real universality of human rights is paramount.¹⁶¹ Such a proposition seems plausible and the UN is well positioned to contribute.¹⁶²

Recent Contours for Newest World Order

Regarding the High Commissioner Pillay’s reference to the “conceptual mud and political quicksand” in which RTD has been mired for years, it is instructive and necessary to also look at broader world order evolution to see what factors will shape the future of a legal RTD. Sengupta stresses with the current phase of globalization, international cooperation is as important as the package of national policies in implementing a strategy for realizing RTD. He also notes the Declaration clearly indicates that the primary responsibility for implementing RTD belongs to States and that the international community has the duty to cooperate to enable States to fulfil that obligation through international cooperation where all, or most, rights are realized through

¹⁶⁰ Frequently Asked Questions on the Right to Development, Fact Sheet No. 37, United Nations, New York, see Introduction.

¹⁶¹ Bertrand G. Ramcharan, 2017, Modernizing the United Nations human rights system at: <https://www.universal-rights.org/blog/modernising-united-nations-human-rights-system/>

¹⁶² Amitav Acharya 2016, The Future of Global Governance, August 2016 Global Governance 22(4), at: https://www.researchgate.net/publication/320058921_The_Future_of_Global_Governance; Chantal Line Carpentier 2018, How United Nations reform can support a reimagined democracy, Global Sustainable Development Goals for people-centred economies and democracies at: <https://www.globalpolicywatch.org/blog/2018/10/08/un-reform-democracy/>; See also UN Retains Strong Global Image at: <http://www.pewglobal.org/2013/09/17/united-nations-retains-strong-global-image/>; Brookings Institute, Is the UN a Friend or a Foe? at: <https://www.brookings.edu/blog/order-from-chaos/2017/10/03/is-the-un-a-friend-or-foe/>; “Making the United Nations Great Again”: Bold Reforms Underway at: <https://www.usglc.org/blog/making-the-united-nations-great-again-bold-reforms-underway/>

an appropriately high and sustainable growth of the economy.¹⁶³ For cooperation to happen, there needs to be stability and coherent dialogue at the global level in the flux of current change. However, theories on new world order abound as Agenda 2030 moves ahead while Petito contends there is no blueprint to construct multicultural and peaceful world order to facilitate such cooperation.¹⁶⁴

In 1989, Fukuyama announced the “End of History” proclaiming the triumph of the West and the “total exhaustion of viable systematic alternatives to Western liberalism.”¹⁶⁵ Huntington retorted with “The Clash of Civilizations?”, a vision of an “Us and Them” type “Realist” approach to an axis of post-Cold War world politics where western power and culture would vie for place with non-western civilizations, a “West and the rest” paradigm, the rest made up of civilizational blocs notably Islam, Orthodox (Russia mainly) China, India, Japan, Latin America and Africa. Anarchy would underpin the fundamental nature of world affairs [human rights and RTD], nation states would remain the most important actors but their domestic interests and actions would be shaped by cultural and civilizational factors.¹⁶⁶

One prominent reaction to Huntington leaning toward a peaceful or utopian vision of world order was the 1998 UN General Assembly Resolution, proposed by President of the Islamic Republic of Iran, Mohammad Khatami, which designated 2001 as the Year of the “Dialogue Civilizations.”¹⁶⁷

¹⁶³ Arjun K. Sengupta, 2013, Conceptualizing the right to development for the twenty-first century, in “Realizing the Right to Development - Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development”, HR/PUB/12/4 UNITED NATIONS PUBLICATION Sales No. E.12.XIV.1 ISBN-13: 978-92-1-154194-6, eISBN-13: 978-92-1-055972-0, See page 82 at:

https://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf

¹⁶⁴ Petito F. (2009) Dialogue of Civilizations as an Alternative Model for World Order. In: Michael M.S., Petito F. (eds) Civilizational Dialogue and World Order. Culture and Religion in International Relations. Palgrave Macmillan, New York at: https://link.springer.com/chapter/10.1057/9780230621602_3#citeas See page 51; See also Niall Ferguson versus Fareed Zakaria: Is the Liberal International Order Over? In Munk Debates at:

<https://www.youtube.com/watch?v=ifGxnlU94hQ>

¹⁶⁵ Francis Fukuyama, 1989, The End of History? The National Interest, Summer at:

https://www.embl.de/aboutus/science_society/discussion/discussion_2006/ref1-22june06.pdf

¹⁶⁶ Samuel Huntington, 1993 / Book 1996 The Clash of Civilizations And the remaking of World Order at:

<https://www.stetson.edu/artsci/political-science/media/clash.pdf> - See generally and section on “A MULTIPOLAR, MULTICIVILIZATIONAL WORLD”

¹⁶⁷ United Nations A/RES/53/22 United Nations Year of Dialogue among Civilizations at:

<https://undocs.org/A/RES/53/22> -- calling inter alia on governments and partners “to plan and implement

Khatami's Dialogical approach presented an alternate paradigm for IR to critically examine and replace IR based on the discourse of power, with an approach of empathy and compassion."¹⁶⁸ In 2005, UNSG Kofi Annan set up the Alliance of Civilizations (UNAOC) in direct riposte to Huntington's argument on the inevitability of civilizations clashing. Noting, as Huntington did, that the understanding and definition of "civilization" can be flexible to include inter alia, religion, culture and tradition, Haynes underlines the positive role UNAOC plays in reaching out to state, non-state actors and interfaith groups to roll back a putative or real 'clash of civilizations', and instead develop enhanced dialogue between cultural and religious groups for mutual, long-term benefit."¹⁶⁹

Sergei explains the 'Dialogue of Civilizations' (DoC) called for a re-discussion of the core Western-centric and liberal global order as a powerful normative challenge to contemporary political orthodoxy.¹⁷⁰ Dugin explains that the coming of multi-polarism seems not to be unexpected, or indeed not unwanted, by the US¹⁷¹ noting that former US Secretary of State Madeleine Albright clarified the US did not want a [US-led] unipolar world, and that economic integration had already created "a certain world that can be even called multipolar". He further notes that the US National Intelligence Council "Global Trends 2025" report foresees the emergence of a "global

appropriate cultural, educational and social programmes to promote the concept of dialogue among civilizations, including through organizing conferences and seminars and disseminating information and scholarly material on the subject, and to inform the Secretary-General of their activities;"; See also GA/9747 Press Release, 5 SEPTEMBER 1998.

¹⁶⁸ Jeffrey Haynes, May 1 2018, Huntington's 'Clash of Civilizations' Today: Responses and Developments at: <https://www.e-ir.info/2018/05/01/huntingtons-clash-of-civilizations-today-responses-and-developments/> See page 4.

¹⁶⁹ Idem note 168 at pages 4- 5.

¹⁷⁰ Sergei 2013, A 'Dialogue Of Civilizations' As A Theoretical Model For A Multipolar World Order At: <https://www.geopolitica.ru/en/article/dialogue-civilizations-theoretical-model-multipolar-world-order>; He notes that events following September 11, 2001 and the subsequent 2003 War in Iraq represented a "Clash of Civilizations" led by the then Bush Administration; See also Johan Eriksson, The 'Clash Of Civilizations' And Its Unexpected Liberalism ,Södertöm University, Sweden at: <https://www.e-ir.info/2013/03/06/The-Clash-Of-Civilizations-And-Its-Unexpected-Liberalism/>; Interestingly, Erikson counters Sergei by holding that George Bush refuted Huntington's theory, by applying to it a liberal interpretation categorizing the "War on Terrorism" as "In truth, [...] a struggle for civilization" and therefore not a clash thereof.

¹⁷¹ A. Dugin, Multipolarity – The Definition and the Differentiation between its Meanings at: <https://www.geopolitica.ru/en/1290-multipolarity-the-definition-and-the-differentiation-between-its-meanings.html>; REFERRING to the diverse works of Kampf, Kennedy, Walton, Hiro and Petito. [Dugin can evoke passions in some western circles]

multipolar system”¹⁷² and contends that while the Westphalian system exists de-jure, it no longer reflects the real system of international relations and requires revision. He foresees a future with a few sovereign, independent centers of global strategic decision-making able to defend their sovereignty in the face of a direct threat, the non-acceptance of universalism of Western standards, norms, and values including democracy and human rights, where the sovereignty of existing nation-states is not taken seriously but declared only on a purely legal level. Weaker nation-states can only achieve sovereignty by combination and coalition of states.¹⁷³ If even some of these contentions were true, how would future dialogue on RTD happen?

Petito draws on the work of Bull to explain that core assumptions of current Western-centric international normative structures need to be revised and welcomes new discussion on *Jus Gentium* influenced by John Rawls’ “The Law of Peoples” advancing a debate that the philosophical basis of international theory and practice is “severely limited by --- legal positivism...” He emphasizes that a dialogically constituted cross-cultural *jus gentium* should “provide grounds for human creativity to flourish” through a new “normative global synthesis” of Buddhist, Hindu and Islamic doctrines with those of the West, balancing the preoccupations of autonomy and social order.¹⁷⁴ He further stresses that Huntington advocated a “good fences make good neighbours” approach to building “walls of containment and separation” while “Dialogue of Civilizations” seeks “bridges,” not “walls,” to link multipolarity with a cross-cultural *jus gentium*.¹⁷⁵

¹⁷² Idem note 171 [Dugin] at page 1, Dugin also cites former Vice President Joseph Biden, during his visit to Ukraine in 2009 as saying “We’re trying to build a multipolar world”; See also Global Trends 2025: A Transformed World, United States National Intelligence Council at: www.dni.gov/nic/NIC_2025_project.html; He notes that U.S. President Barack Obama was the harbinger of an “era of multipolarity” seeking to orient U.S. foreign policy priority to rising BRICS powers.

¹⁷³ Idem note 171 [Dugin] at pages 1, 6-7

¹⁷⁴ Idem note 164 [Petito] at page 56, 57 and 59. See also interview with Fabio Petito on Huntington, Multipolarity and Modernization, Dialogue of Civilizations Research Institute, Published on Jul 3, 2018 at: https://www.youtube.com/watch?v=Vs_TigNcFgA&index=3&list=PLF1usGzxawczGPpHPIxdRiusbn05ppE6D; J. Paul Barker [Series Editor] 2013 - The Clash of Civilizations Twenty Years On, Published by e-International Relations (Bristol, UK) ISSN 2053-8626 at: <https://www.e-ir.info/publication/huntingtons-clash-of-civilizations-twenty-years-on/>; Dieter Senghass 2013, University Of Bremen, Germany, How To Promote A Perspicacious Intercultural Dialogue? The Clash of Civilizations Twenty Years On, Published by e-International Relations (Bristol, UK) at: <https://www.e-ir.info/2013/02/22/how-to-promote-a-perspicacious-intercultural-dialogue/> October 2013, ISSN 2053-8626, [<http://creativecommons.org/licenses/by-nc-sa/3.0/>]

¹⁷⁵ Idem note 164 [Petito] at page 59.

Arevalo-Carpenter explains that societies around the world are embracing populism and short-term thinking in a very human response to the unknown¹⁷⁶ while Brysk stresses the future lies in human rights as political practice and less through application of legal principle.¹⁷⁷ Clapham states that *“Human rights do not really resolve the tension between competing interests and various visions of how the world should be; rather, human rights ideas provide the vocabulary for arguing about which interests should prevail and how to constrain attacks on dignity.”*¹⁷⁸ He sees participation in the human rights [RTD] discussion and argument as a necessarily inclusive one across global geography and cultures so as to have a secure mooring and stresses the advancement of human rights is a political issue due to the power relationships involved at both national and international levels.¹⁷⁹ However he clearly warns that States, left to their own devices, will never put aside their economic and foreign policy interests in “apolitical assessments of the human rights behavior of other states.”¹⁸⁰

Moving the SDGs towards the Right to Development?

At face value, the moral and political dimensions of RTD’s core elements were broadly promoted in September 2015 when all 193 Member States of the United Nations adopted Agenda 2030.¹⁸¹ This builds on 17 Sustainable Development Goals (SDGs) as a collective journey to end extreme poverty, fight inequality and injustice, and protect our planet.¹⁸² States also expressed their

¹⁷⁶ Michelle Arevalo-Carpenter Chief Executive Officer and Co-founder, IMPAQTO, Politics, the Fourth Industrial Revolution and how business can make the world more humane – at <https://www.weforum.org/agenda/2017/01/reactionary-politics-the-fourth-industrial-revolution-and-the-role-of-business-in-a-more-humane-future/>

¹⁷⁷The Future of Human Rights, Twenty First Century Global Dynamics, January 5, 2017 | Volume10 | Issue1 at <http://www.21global.ucsb.edu/global-e/january-2017/future-human-rights>

¹⁷⁸ Andrew Clapham, Human Rights, A Very Short Introduction, Oxford University Press, 2007, 2015, reference the Preface in both editions. He believes human rights frameworks have power to shape a better future and that human rights language is a means to argue and clarify claims and counter claims to rights and interests on a wide vision of CPR and ESCR.

¹⁷⁹ Idem note 177 [Clapham] at page 122.

¹⁸⁰ Idem note177 [Clapham] see Final Remarks pages 161-165.

¹⁸¹Karin Arts, Atabongawung Tamo: The Right to Development in International Law: New Momentum Thirty Years Down the Line? at: Neth Int Law Rev (2016) 63:221–249 at: <https://link.springer.com/article/10.1007/s40802-016-0066-x>

¹⁸² Idem note 181[Arts and Tamo] at page 229 – See footnote 34 referring to South Centre, ‘The Right to Development at 30: Looking Back and Forward’, South News, no. 107, 17 June 2016, <http://us5.campaign-archive2.com/?u=fa9cf38799136b5660f367ba6&id=3a9a00a980> – on its page 6. According to Khor, ‘[t]here is a

determination ‘to mobilize the means required to implement this Agenda through a revitalized Global Partnership for Sustainable Development, based on a spirit of strengthened global solidarity.’¹⁸³ Developed inclusively with Governments, business, civil society and citizens, the 17 SDGs, 169 targets and 230 indicators cover poverty, health, education, water and sanitation, but also inequalities, gender, climate and institutions. However, McInerney-Lankford points out the SDGs themselves do not contain any references to human rights or international law. She highlights that while the SDGs are a significant advance on the MDGs in human rights terms, substantive advances are limited to ad hoc references to human rights principles in the SDG Declaration and in certain SDG Targets and Indicators. That the SDGs are not indexed to, and in essence are disconnected from international law and human rights law norms.¹⁸⁴ This she notes would indicate accountability underpinning the SDGs is diffuse and political rather than legal, reflecting the fragmentation of international law and an absence of international policy coherence between human rights [notably RTD] and development.¹⁸⁵

Arts and Tamo acknowledge the protracted debate on RTD is in stalemate at global level.¹⁸⁶ They recommend the best fallback position from a binding Convention on RTD at global level is to focus on the core elements of RTD which already exist in international law provisions, and to seek to revitalize and realize RTD through mobilizing these. They recommend focus on:

- ❖ a better understanding of the law on international cooperation and related obligations, especially as taken up by UN human rights treaty bodies;

close connection between the Right to Development and the SDGs. Fulfilling the SDGs would go a long way to realizing the right to development’

¹⁸³Historic New Sustainable Development Agenda Unanimously Adopted by 193 UN Members at:

<http://www.un.org/sustainabledevelopment/blog/2015/09/historic-new-sustainable-development-agenda-unanimously-adopted-by-193-un-members/>

¹⁸⁴ Siobhán McInerney-Lankford, 6th January 2017, Human Rights and the SDGs: Progress or a Missed Opportunity? At: <http://ohrh.law.ox.ac.uk/human-rights-and-the-sdgs-progress-or-a-missed-opportunity/> See pages 1-2

¹⁸⁵ Idem Note 184 [McInerney-Lankford] page 2; See also Marjan Ajevski (2014) Fragmentation in International Human Rights Law – Beyond Conflict of Laws, Nordic Journal of Human Rights at:

https://www.researchgate.net/publication/270812975_Fragmentation_in_International_Human_Rights_Law_-_Beyond_Conflict_of_Laws

¹⁸⁶ Idem note 181 [Arts and Tamo] at Conclusion.

- ❖ creating accountability processes, which include monitoring the extent to which States actually perform their RTD obligations; and
- ❖ learning from regional experiences on concretizing RTD most notably in the African regional system.”¹⁸⁷

Following the same logic, De Feyter recalls differing interpretations of the 2016 HRC Resolution 4/4 where NAM pushed for a new RTD Treaty emphasizing the need to address inequalities in the international financial system and greater participation of the South in global decision-making on economic policy and fairer trade.¹⁸⁸ The EU opposed an international legal standard of a binding nature, favoring the elaboration of benchmarks and indicators instead, highlighting that IHRL only recognized clearly that States have obligations with regard to persons falling under their national jurisdiction. They also stressed the need for suitable domestic conditions in developing countries including good governance, democracy and responsible economic management. De Feyter’s best option in these circumstances is the elaboration of a Framework Convention as a general system of governance for RTD, to complement the current human rights regime.¹⁸⁹ However, and notwithstanding the strong merits of these two approaches, and the necessity, it is held, that they are indeed pursued with great energy, the very need for them as fallback positions to a Convention-based RTD after 32 years of global impasse brings us back to

¹⁸⁷ Idem note 181 [Arts and Tamo] at page 247, footnote 114 – referring to Fantu Cheru (2016) Developing countries and the right to development: a retrospective and prospective African view. Third World Q 37:1268–1283 that: ‘the UN Charter and the accompanying two human rights covenants establish the foundations for an ethical system of global governance’.

¹⁸⁸ HRC Council resolution 4/4, 30 March 2007 at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=13040

¹⁸⁹ Koen De Feyter 2013 - Towards A Framework Convention On The Right To Development, Friedrich-Ebert-Stiftung | Global Policy and Development, Hiroshimastraße 28 | 10785 Berlin | Germany at: <http://library.fes.de/pdf-files/bueros/genf/09892.pdf>; Such a Treaty would go beyond individual State responsibility and venture into areas and principles of international development such as mutual accountability, alignment of policies among partner countries, and inclusive partnerships. See also Framework Convention/Protocol Approach, January 1999, Report number: Who/Ncd/Tfi/99.1affiliation: World Health Organization – See Introduction: What is a framework convention? at: https://www.researchgate.net/publication/289507490_Framework_ConventionProtocol_Approach

geopolitical boxing matches regarding divisions between North and south on RTD which seem not to be going away anytime soon.

This whole area of attention fell under former Millennium Development Goal [MDG] 8 of the Global Partnership for Development, “the most neglected of all MDGs”.¹⁹⁰ In looking ahead to SDG 17: Revitalize the global partnership for sustainable development, Razavi notes that like the MDGs, the SDGs are relatively silent on the policies needed to achieve the Goals and targets set in Agenda 2030. He notes the so-called “means of implementation” [MOI] were defined and included in the SDGs on the insistence of developing countries both for goals (17) and targets.¹⁹¹ Reddy and Kvangraven emphasize MOIs vary greatly, some so vague that they are practically meaningless, while others are too specific.¹⁹²

SDG 17 speaks of partnerships between governments, the private sector and civil society, principles and values, a shared vision and shared goals that place people and the planet at the centre. It calls on action to mobilize, redirect and unlock the transformative power of trillions of dollars of private resources and long-term investments, including FDI needed in developing countries which require clear direction from the public sector. It aims to retool review and monitoring frameworks, and oversight mechanisms, and strengthen regulatory and incentive structures to enable and attract investments.¹⁹³ However, it is submitted here, the key element of Goal 17 where implementing RTD is concerned is the “Systemic issues” and their relation to targets set for “Finance” and “Trade”. The “systemic issues” read:

¹⁹⁰Idem note 181 [Arts and Tamo] at page 239.

¹⁹¹Shahra Razavi (2016) The 2030 Agenda: challenges of implementation to attain gender equality and women's rights, *Gender & Development*, 24:1, 25-41, DOI: 10.1080/13552074.2016.1142229 at: <https://policy-practice.oxfam.org.uk/publications/the-2030-agenda-challenges-of-implementation-to-attain-gender-equality-and-wome-599230>

¹⁹² Sanjay G. Reddy and Ingrid Harvold Kvangraven, *Global Development Goals: If At All, Why, When and How?* At https://www.economicpolicyresearch.org/media/k2/attachments/NSSR_WP_232015.pdf; However, they acknowledge that because MOI address substantive policy alternatives, achieving consensus is bound to be divisive.

¹⁹³ See SDG 17: Revitalize the global partnership for sustainable development at: <https://www.un.org/sustainabledevelopment/globalpartnerships/>

- Enhance global macroeconomic stability, including through policy coordination and policy coherence
- Enhance policy coherence for sustainable development
- Respect each country's policy space and leadership to establish and implement policies for poverty eradication and sustainable development.¹⁹⁴

These three lines of text in SGD 17 represent the key substantive content of the North-South political and ideological controversy regarding RTD. Lack of agreement on these issues is the reason for the long-lived difficulty in codifying and formally implementing RTD as a human right. Lack of agreement also represents the extant clash of ideologies, if not indeed of civilizations, that has been going on for so long on RTD. It remains for future Dialogue under SGD 17 to determine if developing countries will achieve a right to development aid? or if the predominant macroeconomic model for the remainder of Agenda 2030 will be a Western-based free market neoliberal model? if Keynesian economics find their way back to some extent? or if some other middle ground will appear? Dialogue under SDG 17 should also address whether IFIs will integrate human rights more uniformly? whether foreign aid becomes a free-for-all serving self-interest? and if MNCs agree to be regulated?

Contours of NIEO from 2019 - post-Westphalia?

The resolution of North-South differences regarding RTD as outlined rests squarely on the evolution of the NIEO debate, and on how the SDGs are taken forward. In this context, there are at least two elephants in the room or two ongoing boxing matches.¹⁹⁵ The first is the controversy on the relevance of the Westphalian IL-IR model with its Western-value systems of world legal and socio-economic order and policies in a globalized world which favours non-specific, non-static readings of structure and relations.¹⁹⁶ The second is the increasingly charged strategic rivalry between the United States and China. In parallel, Apodaca notes the global environment is shaped by the primary reason States provide development aid i.e. pursuit of their own foreign policy goals, predominantly to promote geostrategic interests. While conceding State policy can also include altruistic motivations including increasing human welfare in line with Agenda

¹⁹⁴ Idem note 193 [SDG 17] at "Systemic Issues"

¹⁹⁵ Some suggest "bull in a China Shop" as the better idiom.

¹⁹⁶ He Fan & Ye Qianlin, World Economic Order: Present and Future at: <http://csis.org/analysis/parallel-perspectives-global-economic-order>

2030,¹⁹⁷ she states the only differences between traditional [DAC] and nontraditional [China/BRICS] donors is that the latter generally do not place conditionality on their loans, and have strong self-interest requiring “return” on their foreign aid investments.¹⁹⁸ Following the reign of Washington Consensus orthodoxy, Lopes welcomes the contemporary blossoming of alternatives and the refreshing variety of approaches with new theories evolving to keep pace with the fluidity of globalization.¹⁹⁹ However, he underscores this signals the demise of Western ideology in guiding policy-making and that the return of State intervention [Keynesian economics] to correct market failures is inevitable.²⁰⁰

The Westphalian Model

Conceptually defined as “a society of states based on the principle of territorial sovereignty”, Mulcaire notes the Westphalian Model also entails the principles of legal equality, autonomy and non-intervention in the affairs of other states.²⁰¹ Harris explains these characteristics represent

¹⁹⁷ Clair Apodaca 2017, Foreign Aid as Foreign Policy Tool, Oxford Research Encyclopedias, Politics, Apr 2017 DOI: 10.1093/acrefore/9780190228637.013.332 See Summary and Keywords, and Conclusions, for key points. This is consistent with formal donor policy e.g. within OSEC or at country level DFID at: <http://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-332>

¹⁹⁸ Idem note 197 [Apodaca] see page 4 citing Bigsten, Platteau, and Tengstan (2011) estimated that if the European Union countries were to choose to optimize the distribution of foreign aid for the sole motive of reducing poverty, they would need to reallocate \$19 billion of the \$27 billion of EU aid—that is, over 70% of EU foreign aid—directing it to only the 20 poorest countries. Bigsten et al. (2011) determined that “the reallocation would lead to a modest increase of poverty among the donor darlings and a large decline in poverty in the orphan countries” (p. 11). However, the EU countries do not wish to optimize their foreign aid because they have economic and political purposes other than poverty reduction when they allocate aid. She notes that poverty reduction, good governance, and the growth of democracy in developing states are in the national interests of traditional DAC states but the growth of nontraditional donors and their resistance to imposing democratic and human rights conditionality on their lending may further reduce foreign aid to self-interested motivations of commercial or political interests.

¹⁹⁹ Idem note 46 [Lopes] paragraph 47, page 7.

²⁰⁰ Idem note 46 [Lopes] paragraph 43, page 7 referring to Ha-Joon Chang 2010 who noted in relation to South Korea that “industrial policy is conspicuous by its absence,” reminding us that “sustainable export success over a long period of time... requires protection and nurturing of ‘infant industries’ through selective industrial policy, rather than free trade and deregulation.” In contrast to the “one size fits all” approach promoted by the Washington-based institutions, Koreans speak of a “dynamic iPhone model” or “a set of development apps for every occasion, drawn from successful approaches in different countries” See Chang, Ha-Joon (2010), “It’s time to reject the Washington Consensus,” The Guardian, 9 November at: <http://www.guardian.co.uk/commentisfree/2010/nov/09/time-to-reject-washington-seoul-g20>; However, all schools of economic thought are still dominant in contemporary debate. Keynes demand side economics and role of the State; Fredrick Hayek’s supply side freedom theory, today’s dominate model, whereby the free operation of markets needs to be allowed to balance the economy while the State provides the legal framework for this to operate. Marx is also in critical review again, not for his communist manifesto but for his insights into the weaknesses of capitalism.

²⁰¹ Camille Mulcaire 2014, How ‘Westphalian’ is the Westphalian Model? at: <https://www.printfriendly.com/p/g/VtGZcu> See page 1, referring to the definition of Evans and Newman: Evans, G. & Newnham, J. (1990) The Dictionary of World Politics: A Reference Guide to Concepts, Ideas and Institutions, Hemel Hempstead: Harvester Wheatsheaf, and to Article 2.7 of the UN Charter.

the foundations of all international order-building projects since the 1648 Peace of Westphalia, up to today's dominant liberal international order.²⁰² These order-projects include: (i) the Concert of Europe 1815, when European powers agreed to reorganize the political map of Europe and develop a system of conflict resolution to preserve peace and balance of power to end the Napoleonic wars; (ii) the “Pax Britannica” (1815–1914), where informally recognized “Great Powers” and their international jurists justified colonization around the globe on a Westphalian value-system of civilization. This period increasingly led by Europe and the US witnessed growing free trade, IL development and globalization;²⁰³ (iii) strengthening US leadership in 20th century under the [ill-fated] League of Nations,²⁰⁴ the post-WWII formation of the UN and Bretton Woods Institutions, and subsequently, the West's embrace of individual human rights “as a cornerstone of the international community.”²⁰⁵

In tracing this evolution, Kayaoglu explains that because natural law was the dominant international legal regime of the 17th century, Westphalian narrative as we know it did not emerge until well after the 1648 Peace. Natural law connecting justice and morality was assumed to come from a transcendental source above states. This gave it a universal character, valid for everyone, everywhere, all the time. These qualities allowed it to transcend political boundaries or inter-state treaties in a context where international society was assumed to exist naturally, albeit in a state of anarchy, with no concept of sovereignty outside the domestic realm.²⁰⁶ Hobbes's Leviathan espoused natural law based on “realism” and “social contract theory” among suitably situated rational, free, and equal persons where people and States existed in a “State of Nature” based on constant war and anarchy in which individuals should submit to the authority of an “absolute—undivided and unlimited sovereign power.” The source of law and therefore authority was vested in the domestic sovereign for whom no equivalent existed in the

²⁰² Idem note 43 [Harris 2015]

²⁰³ The Century of Peace | Boundless World History at: <https://courses.lumenlearning.com/boundless-worldhistory/chapter/the-century-of-peace/>;

²⁰⁴ Despite President Wilson's leadership, the United States did not join the League of Nations.

²⁰⁵ Idem note 43 [Harris] at page 3.

²⁰⁶ Turan Kayaoglu, 2010, Westphalian Eurocentrism in International Relations Theory, *International Studies Review* (193–217) at: https://www.jstor.org/stable/40730727?seq=1#page_scan_tab_contents

international arena.²⁰⁷ However, with the menace of Napoleonic imperialism, German States found no defense of their sovereign jurisdictions in natural law which was unable to clarify doctrines of sovereign recognition and sovereign territoriality.²⁰⁸ Their solution to ward off Napoleon came with the transformation from natural law to legal positivism in late 18th and 19th century. Here, Vattel's "The Law of Nations" placed State sovereignty at the centre in international law through adding an external dimension to domestic sovereignty. Thus the State became the sovereign representative of a country's population, and the "external" or foreign influence was excluded from domestic authority structures by the sovereign. This construct became known as Westphalian sovereignty with States as sole subjects of the law of nations.²⁰⁹

However, Mulcaire notes, these post 1648 political constructs were in fact not Westphalian in their essential characteristics. Hierarchy and not sovereign equality was the 17th century political construct, and the word sovereignty was never actual used in the either of the treaties signed in 1648.²¹⁰ She also cites Krasner to highlight that permanent membership of the UN Security Council today is evidence of sovereign inequality, which in Westphalian terms might be understood as an example of "organised hypocrisy".²¹¹ In this regard, revisionist scholars including Osiander support the view that the Westphalian IR narrative is in fact a "myth" with no relation to the actual Peace of Westphalia from which the model derives its name.²¹² Nonetheless, and despite the myth, Harris notes the Westphalian attributed elements of international order are the most widely accepted rules of IR today. He also stresses this is not the case for the liberal components of world management associated with free trade, democratic

²⁰⁷ Stanford Encyclopedia of Philosophy, Hobbes's Moral and Political Philosophy First published Tue Feb 12, 2002; substantive revision Mon Apr 30, 2018 at: <https://plato.stanford.edu/entries/hobbes-moral/> See generally and page 5 where it notes Hobbes' "essential rights of sovereignty" and the idea that to refer resolution of [a] question to some further authority, itself also limited and so open to challenge for overstepping its bounds, would be to initiate an infinite regress of non-authoritative 'authorities' (where the buck never stops).

²⁰⁸ Idem note 206 [Turan Kayaoglu] at page 198-199 and 194 on German worries regarding Napoleonic imperialism. Also page 194 where he states that Westphalian sovereignty is a misnomer.

²⁰⁹ Idem note 206 [Turan Kayaoglu] at page 198.

²¹⁰ Idem note 201 [Camille Mulcaire] pages 1-3

²¹¹ Idem note 201 [Camille Mulcaire] citing Krasner, S.D. (1999) *Sovereignty: Organized Hypocrisy*, Princeton, New Jersey: Princeton University Press.

²¹² Idem note 201 [Camille Mulcaire] citing Osiander, A. (2001) 'Sovereignty, International Relations, and the Westphalian Myth' in *International Organization*, Vol. 55: 2

government, national self-determination, adherence to international law and respect for human rights, which are cherished only by a Western sub-set of the whole.²¹³

But why, if the Westphalia model is a myth with little relation to the 1648 Peace is it promoted as if it has? Kayaoglu explains that scholars sought to perpetuate European-Western exceptionalism to elevate Western ideas and ideals within a Westphalian narrative of superiority and exclusivity in relation to other orders elsewhere in the world.²¹⁴ Citing justifying the colonization of Africa under the Berlin Conference as an example, he notes States and scholars created a strategic normative hierarchy where “Western states produce norms, principles, and institutions of international society - and non-Western states lack these until they are socialized into the norms, principles, and institutions of international society.”²¹⁵ Similarly, the “English School” or “International Society Approach” scholars coopted the Westphalia narrative during decolonization to help protect and sustain European imperialist interests against a post-colonial, non-Western revolt [such as NIEO essentially was], challenging Western dominance and values.²¹⁶ Once the West secured the concept that accepted international society was based on European history and values, any non-Western disagreement with the West was taken as a revolt against Western values, and by extension, against international society. Similarly, on the flipside, where non-Western societies “fulfilled” so-called “standards of civilization,” the European states then “admitted” them into “international society.” Constructivist scholars also place a European geographical limit on norms and doctrine for human rights and exclude the possibility of accepted international norms having emanated from anywhere else such as for example China or the Ottoman Empire. These Eurocentric Westphalian models create an us-and-them, Western-Westphalia-In-Group who are good -- and a Non-Western-Out-Group which by Westphalian logic

²¹³ Idem note 43 [Harris] at page 4.

²¹⁴ Idem note 206 [Turan Kayaoglu] at page 196-199

²¹⁵ Idem note 206 [Turan Kayaoglu] see page 204. Doctrines like Westphalian sovereignty that dispossessed non-Western rights or through extraterritoriality policies that limited non-Western legal authority, or acted as apologists for Europe’s excessive brutality in the name of its civilizing mission and expansion of international society. In sum, international jurists were often complicit in, and frequently ardent supporters of, European colonialism.

²¹⁶ Idem note 206 [Turan Kayaoglu] at page 206 citing Callahan, William A. (2004) Nationalising International Theory: Race, Class and the English School. *Global Society* 18(4): 305–323.

are bad, and will remain bad until they change their ways and accept and practice the norms of the Westphalia-in-group.²¹⁷

Harris notes that today, Westphalian fixation has created a cleavage in world politics between Russia, China and other non-liberal States which are often exasperated by Westphalian exclusivity and superiority, and defenders of the Westphalia paradigm.²¹⁸ Lechner notes the inability of the international community to manage major problems of environmental pollution, financial crises, crime, and underdevelopment, which are seen by theorists of globalization as a failing of the Westphalian model of international anarchy [Hobbesian] which prioritizes security over economic issues, and privileges the sovereign state in a context of an increasingly interdependent globalized world.²¹⁹ Kayaoglu tells us this distorts our understanding of modern international systems and leads to misdiagnoses, prevents theorizing of cross-civilizational, cross-regional interdependencies and accommodation of pluralism which is inherent to a globalized world.²²⁰ As Krasner put it, “compromising” Westphalia is essential in order to gain a valid and more imaginative globalization and growing interdependence.²²¹ Cutler notes Westphalian inspired notions of state-centricity, positivist international law, and “public” definitions of

²¹⁷ Idem note 206 [Turan Kayaoglu] see page 196

²¹⁸ Idem note 43 [Harris] at page 4.

²¹⁹ Silviya Lechner 2017, *Anarchy in International Relations* - Oxford Research Encyclopedia of International Studies page 17, Citing Held, D. (1995). *Democracy and the global order: From the modern state to cosmopolitan governance*; Oxford: Polity Press; Held, D., & McGrew, A. (2007). *Globalization/anti-globalization: Beyond the great divide* (2d ed.). Cambridge, U.K.: Polity Press. At:

<http://oxfordindex.oup.com/view/10.1093/acrefore/9780190846626.013.79> See generally and page 17.

²²⁰ Idem note 206 [Turan Kayaoglu] - See at Introduction and pages 195-196.

²²¹ Krasner, S.D. (1995) ‘Compromising Westphalia’ in *International Security*, Vol. 20: 3 See generally and Conclusions at page 151 “Compromising Westphalia is not only inevitable, it can also be good. Explicitly recognizing that different principles ought to vary with the capacity and behavior of states would not only make normative discourse more consistent with empirical reality, it would also contribute to the more imaginative construction of institutional forms-forms that compromise Westphalia that could create a more stable and peaceful international system. at: [https://www.google.com/search?q=Krasner%2C+S.D.+\(1995\)+%E2%80%98Compromising+Westphalia%E2%80%99+in+International+Security%2C+Vol.+20%3A+3&rlz=1C1GGRV_enTD803TD803&oq=Krasner%2C+S.D.+\(1995\)+%E2%80%98Compromising+Westphalia%E2%80%99+in+International+Security%2C+Vol.+20%3A+3&aqs=chrome..69j57.2825j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Krasner%2C+S.D.+(1995)+%E2%80%98Compromising+Westphalia%E2%80%99+in+International+Security%2C+Vol.+20%3A+3&rlz=1C1GGRV_enTD803TD803&oq=Krasner%2C+S.D.+(1995)+%E2%80%98Compromising+Westphalia%E2%80%99+in+International+Security%2C+Vol.+20%3A+3&aqs=chrome..69j57.2825j0j7&sourceid=chrome&ie=UTF-8)

authority are incapable of capturing the significance of non-state actors, informal normative structures, and private, economic power in the global political economy.”²²²

Lechner explains further that theories formulated within economics such as “hegemonic stability”, “complex interdependence” and “globalization” currently represent world politics as a “global political economy” or global hierarchy. Conversely, international law favours conceptualizing in terms of anarchy. Noting that “international anarchy presupposes the institution of government and...the sovereign state as a public and centralized form of government”, Lechner cites Lake’s contention that state sovereignty, international security and even legitimacy are economic “goods” to be traded against each other in “great power management globally”. In stark contrast, International Law holds sovereignty and rules of peaceful coexistence to be values which are protected and not subject to trade-offs on the international scene. Whereas economics can produce the image of a single, borderless global economy, international law cannot. Where hierarchy [economics] may emerge within the global economic system simply because economic reasoning may dictate that hierarchy provides the best value maximization, international law [anarchy] is radically different with its strict territorial and normative juridical independent units [States].²²³ Therefore, the concept of global governance can be seen as the expression of a gradual departure from the classic Westphalian system towards a less conflictual, more cooperative and consensual system.

²²² Claire Cutler 2001, Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy. *Review of International Studies*, Vol. 27, No. 2 (Apr., 2001), pp. 133-150 at: <http://www.jstor.org/stable/20097724>

²²³ Idem note 219 [Silviya Lechner] at pages 16-18.

The United States, China and Westphalia

As noted earlier, the evolution of the rivalry between the United States and China as two major world powers or poles, and their different approaches to human rights and economics, are pivotal to the future RTD and its implementation. As to the legal perspectives and best means for implementing RTD at the global level by all countries, it is recognized there needs to be a multifaceted approach where the option of a binding international convention either for a specific right or a framework treaty, should be seen in the context of a range of alternative approaches for meeting the intention of paragraph 2 (d) of Human Rights Council resolution 4/4.²²⁴ In this optic, attainments in realising ESCR and CPR by individuals and groups contribute directly to the realisation of the composite right to development.²²⁵ However, the Independent Expert [RTD] has argued that focusing on the policies to eradicate poverty as a multidimensional phenomenon which constitutes a denial of RTD is an appropriate means, and suggested here, a fundamental pillar of action for the international community, to secure the right to development.²²⁶

For future progress on poverty reduction as a means to implement RTD, and given their heavily weighted influence on global economics, it is paramount to have agreement between the United States and China (EU and others), on the doctrine, substantive content, policies and modalities of implementing RTD. Whether such an outcome is realistic and achievable within the current definition of RTD in the Declaration is doubtful, given the current state of play with advancing US and Chinese traditions as stated earlier. However, there is ample opportunity to further explore common ground to meet the intention of paragraph 2 (d) of Human Rights Council resolution 4/4 including by consolidating, updating and revising the 1986 Declaration on RTD, preparing new guidelines or recommendations for implementing the Declaration, concluding development

²²⁴ Stephen P. Marks, Beate Rudolf, Koen De Feyter and Nicolaas Schrijver, 2013, The role of international law, Concluding statement of the Expert Meeting on legal perspectives involved in implementing the right to development, in “Realizing the Right to Development - Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development”, HR/PUB/12/4 UNITED NATIONS PUBLICATION Sales No. E.12.XIV.1 ISBN-13: 978-92-1-154194-6, eISBN-13: 978-92-1-055972-0, See page 468

²²⁵ Idem note 163 [Sengupta] 2013 pages 67-90

²²⁶ Idem note 163 [Sengupta] page 75

compacts or multi-stakeholder agreements involving international organizations, enterprises, commercial banks and civil society organizations, and mainstreaming the Declaration into regional and interregional agreements.²²⁷

In this context, it is held here, the economic relations and the progressive evolution of economic doctrine and policy between these two countries in particular is THE strategically important dossier where RTD is concerned. The US tradition of focusing on individual civil and political rights (not economic rights), liberalized markets and Washington Consensus economic policies does not, in principle, support China's communitarian value system approach which prioritizes economic and social rights and strong advocacy for RTD - in its own way – as the most important right. Then, to achieve consensus between these countries on RTD requires for each to stand back, and then re-engage in new dialogue to achieve an understanding of and respect for their different traditions and how they can find their own rationales for what Rawls terms an “overlapping consensus” on the substance of international society, and human rights [RTD].²²⁸

In this regard, Du notes that China's emerging power poses challenges to Western-neoliberal value-based international economic legal order (IELO) through its unique socialist market economy “Melding the power of the authoritarian state with the power of capitalism.”²²⁹ Appeasing western fears that China may be a disruptive force to IELO, Du explains that China has conformed to the existing IELO paradigm which (so far) has not changed because of an economically dominant China. Contrasting the Washington-Consensus approach with its invisible (market) hand and too little government intervention, with China's too visible hand and too much government intervention, he cites Peerenboom's and Gruin's argument that neither the China nor US/IELO models can be static but must constantly adjust and adapt to changing

²²⁷ Idem Stephen P. Marks, Beate Rudolf, Koen De Feyter and Nicolaas Schrijver, 2013 at page 468

²²⁸ Idem note 206 [Turan Kayaoglu] - page 214.

²²⁹ Ming Du, University of Lancaster, Social & Legal studies 25(1), book review on Lisa Toohey, Colin B Picker And Jonathan Greenacre (eds) China In The International Economic Order: New Directions And Changing Paradigms, Cambridge: Cambridge University Press, 2015, pp. 344, ISBN: 9781107062016 at: <http://journals.sagepub.com/action/ssostart?redirectUri=/action/ssostart>; See pages 123-124,

circumstances, where both normative theoretical foundations are malleable and open to contestation.²³⁰

Also, the political discourses of the US and China at Davos, respectively, in 2017 by Xi Jinping and Donald Trump in 2018 had, arguably, more points of commonality than of divergence, both speaking to a shared future, dreams, and a better world and better lives for all. However, overtones of dissatisfaction by each, China alluding to the US imposing its development path on others, the US referring to unfair trade practices by China have, at the time of writing, evolved into a Trade-War between them, currently in ceasefire, pending further discussion.²³¹

Kayaoglu stresses that Westphalian narrative inhibits the legitimacy and efficacy of the notion of international society because of its bias in designating “the West” as primary creator of ideas of international society, while non-western States must be coerced and coaxed into conforming and complying with these ideas. He emphasizes that a truly global international society needs to appeal to and be affirmed by diverse traditions, such as the Chinese, Indian, Jewish, and Islamic.²³² Ling notes that Westphalian [US] IR cannot conclude otherwise; China poses a threat

²³⁰ Idem note 229 [Ming Du]

²³¹ World Economic Forum - President Xi's speech to Davos 2017 in full at: <https://www.weforum.org/agenda/2017/01/full-text-of-xi-jinping-keynote-at-the-world-economic-forum/>; and World Economic Forum - President Donald Trump's Davos 2018 address in full at: <https://www.weforum.org/agenda/2018/01/president-donald-trumps-davos-address-in-full-8e14ebc1-79bb-4134-8203-95efca182e94/>; See also Donald Trump and Xi Jinping declare trade truce at G20 at: <https://www.theguardian.com/world/2018/dec/02/donald-trump-and-xi-jinping-declare-trade-truce-at-g20>; While its frustration with the Western neoliberal approach is now clear, some analysts believe China wants to impose its own vision, not only to reshape but to redefine the global economic order by establishing new institutions such as the AIIB to influence how financial aid is offered; Nicolas contends however that despite not having a seat at the table in the past, and the temptation to go it alone now as problems with Western-neo-liberal policies are exposed, China still believes the multilateral approach is the better choice over bilateral engagements in pursuit of its own interests, even if it shies away from Western type regulation – See Françoise Nicolas, « China and the Global Economic Order », China Perspectives [Online], 2016/2 at: <http://journals.openedition.org/chinaperspectives/6960> at page 9 and footnote 18, and Conclusions. “Recent years have seen a new trend appear: China has begun to take an increasingly offensive stance, marked by a degree of revisionism.” It is also gaining more traction through improved voting rights in IMF and World Bank; seeking a fundamental reform of the international monetary system with the yuan now the fifth international reserve currency, and making agreements with trade partners which are based on Chinese direct investment in a country, and China’s importing of basic commodities from that same country.

²³² Idem note 206 [Turan Kayaoglu] See Conclusion at page 214

to the West! A “China Threat Thesis.”²³³ That Westphalia binary logic provides a zero-sum calculus of inevitable clash and or exclusion, unless China concedes to Western standards.²³⁴ In this regard, she notes that while former Secretary for State Clinton insisted the US had no wish or intention to impose its system on other countries, and acknowledged that certain values are universal and intrinsic to all nations including in Asia, she ended by specifying that world politics as we know it reflects “the open and rules-based system that the United States helped to build and works to sustain.”²³⁵ Ling concludes that to join the Clintonian conception of international community, all states must emulate the West – or risk de facto exile and exclusion.²³⁶

Examining points of view from both inside China and from diaspora, Ling stresses that when Chinese scholars apply the Westphalian logic to China’s own relations with the West, they [logically] arrive at the same conclusion as their Western counterparts. The Westphalian binary logic provides them the ultimatum of compliance or discipline, clash and exclusion, or compliance so as to be allowed into the Club. Ling contends this leads to Chinese frustrations that vary from “they (US/West) don’t understand ‘us’ (China/Chinese)” and “they never will”, to there is “no way to become friends”, to the more pointed “infuriating” to see the West use the China threat today as it did previously with the “yellow peril.”²³⁷ To resolve such differences and misunderstanding (perceived or real), which are central to human rights and RTD, Brincat

²³³ L. H. M. Ling (2013). Worlds beyond Westphalia: Daoist dialectics and the ‘China threat’. Review of International Studies, 39, pp 549-568 doi:10.1017/S026021051200054X at:

https://www.researchgate.net/publication/259433621_Worlds_beyond_Westphalia_Daoist_dialectics_and_the_'China_threat'

²³⁴ Idem note 233 [Ling] at page 553, She holds that “Westphalia logic implicitly favours the US/West as leading an ‘open and rules-based system’ with a military that ensures global democracy, free trade, and human rights. China exemplifies the opposite: it aims to grab power with world domination in mind and a military that serves its national interests only. The course of action thus becomes clear: the former must stay in charge while the latter must choose.”

²³⁵ Idem note 233 [Ling] - Ling cites Hilary Clinton -- World politics as we know it reflects ‘the open and rules-based system that the United States helped to build and works to sustain’. Ling concludes that to join the international community, then, all states must emulate the West – or risk de facto exile and exclusion.

²³⁶ Idem note 233 [Ling] at page 553. She cites Robert Kagan who states that [only] ‘the American system’ has the wherewithal to ‘adapt and recover from difficulties [where] many other nations, including its geopolitical competitors’ cannot; ‘[i]n the end’, he writes, ‘the decision [about the future of world order] is in the hands of Americans’.

²³⁷ Idem note 233 [Ling] see pages 554-555

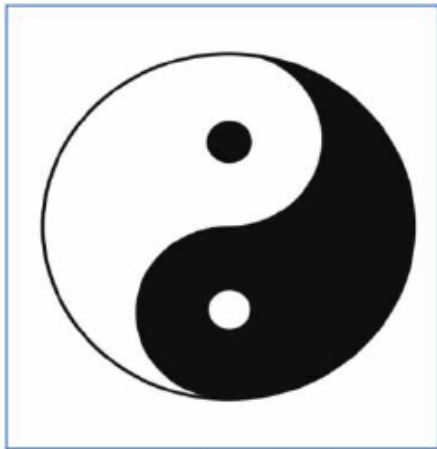
explains the use of Dialectics as a possible model for better dialogue between countries.²³⁸ Ling contends that contrary to Westphalian logic, the Dao Dialectics of Yin-Yang can examine both what pushes the two countries apart as well as what binds them together and: (i) does not indicate superiority but ontological parity, changes over time and can help reframe the 'China threat' thesis into a politics of engagement; (ii)²³⁹ looks at co-implications of the US and China with such examples as China IR scholars being trained primarily in the US and the emergence of a new blended US-China elite who could forge a path to mutual understanding and cooperation; (iii) compels to see beyond bilateral relations to consider the whole of world politics. Looking large and away from Hobbesian anarchy, Dao is organic, filled with hybridities, complicities and complementarities which organically oblige US-West tradition to engage with China, BRICS and NAM tradition to try to find "the way".²⁴⁰ What is essential here, whatever the form, whether a "Dialogue of Civilisations" or Dao Dialectics, is the need for new and constructive dialogue where both countries may find differences in approach do not necessarily lead to differences in outcomes or aspirations.

²³⁸ Shannon Brincat, 'Towards a Social-Relational Dialectic for World Politics', *European Journal of International Relations*, 17:4 (December 2011), pp. 679–703. In IR, according to Brincat, '[d]ialectics offers...a means to reframe the social ontology of world politics, from one of alleged stasis and immutability, to one of process, change and the social relations that generate them.' See Page 680 where she adds: What makes social-relational dialectics such a capable method for understanding processes is how it informs on particular phenomena within the totality of social relations rather than their isolation or abstraction . . . [Dialectics] provides the contextual analysis of these social relations, rendering the interconnectedness between such phenomena and the immanent tendencies for social transformation that this engenders.

²³⁹ Idem note 233 [Ling] at pages 564-570.

²⁴⁰ Idem note 233 [Ling] at page 566, and 558-560. She notes each nationalist camp expects the other to attack with hard or soft power where any negotiations which follow will focus on sovereignty, borders, and national security, regardless of any actual collaboration that takes place on the ground. [Dao or "the Way" or "way making" is concerned with change and transformation where polarities [and all things] are viewed as the product of on-going processes of mutuality, variety and generative unity of polarities; polarities which exist in opposition as well as in complement to each other.]

The Daoism's yin-yang diagram encapsulates its philosophy (see Figure 1).²⁴¹



- Symbolises a method of reasoning that systematically interrogates “the interrelations among constituent parts and part-whole relations”
- No categorical “black box” can survive
- Polarities are mutually created so there is co-implication within polarities [US and China]
- There are elements of the One in the Other.
- No one condition is fixed as intrinsically good or bad, desired or repulsed, useful or not. It Depends.

Conclusion

RTD as a recognized human right is settled since the consensus achieved by the Vienna Declaration and Programme of Action in 1993. However, there are no internationally legally binding obligations relating to RTD as defined in the Declaration and therefore a claim to RTD cannot be realized in a given institutional set-up (Exception as separately defined at regional level). RTD can be a societal goal or abstract right but does not rise to the level of a right proper, a “valid right” or a “concrete right” related to any practical social arrangement.²⁴² This notwithstanding, its composite nature allows the justiciability of its constituent rights through existing human rights treaties while its practical implementation can draw on an extensive and evolving global architecture for action.²⁴³ In this context, the HLTF on RTD recognizes the greatest challenge for the implementation of RTD in theory and practice, is to reconcile the conceptual

²⁴¹ Idem note 233 [Ling] at pages 559-561 - See Dao Figure and explanation. Ling cites Sunzi see related footnote 70

²⁴² Idem note 183 [Sengupta] 2013 pages 67-68

²⁴³ Idem note 163 [Sengupta] 2013 page 75 – Also Idem note 227 [Marks, Rudolf, De Feyter and Schrijver] 2013, page 75.

approaches of human rights and economics to maximize the well-being of all individuals and peoples through sound economic policies that foster development and growth with equity.²⁴⁴

The World Bank warns us that while human development has seen enormous progress in recent history,²⁴⁵ a business-as-usual path will not be able to eradicate extreme poverty by 2030.²⁴⁶ In December 2018, in the “Henry A. Kissinger Lecture” at the US Library of Congress, IMF Managing Director, Christine Lagarde, emphasized that the 2008 global financial crisis reminded the world that international cooperation is essential if future global challenges are to be met.²⁴⁷ She emphasized that G20 nations, the US Federal Reserve and the IMF acted in concert in 2008 by employing extra-ordinary steps to “save the system” and secure the global economy, adapting lending instruments, particularly to help low-income countries, but also to craft stronger financial sector regulations to prevent future crisis. The extraordinary steps she refers to include at least a “brief burst” of Keynesian economics with the interventionist type approaches neo-liberalists would normally not endorse, in fact, would dismiss.²⁴⁸ Yet this is what happened post-2008 in order to save the system. Here Ms. Lagarde notes we must build on what works, change what does not, and continually evolve, improve, and imagine a better future for all people.²⁴⁹ Calling for new creativity to “Reimagine International Cooperation” she emphasized US leadership is fundamental to meeting future challenges which require adaptation and reform once more,

²⁴⁴The right to development in practice: provisional lessons learned 2013, High-level task force on the implementation of the right to development, page 469 in “Realizing the Right to Development - Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development”, HR/PUB/12/4 UNITED NATIONS PUBLICATION at

²⁴⁵ The Fourth Industrial Revolution: what it means, how to respond at:

<https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/>

“The First Industrial Revolution used water and steam power to mechanize production. The Second used electric power to create mass production. The Third used electronics and information technology to automate production. Now a Fourth Industrial Revolution is building on the Third, the digital revolution that has been occurring since the middle of the last century. It is characterized by a fusion of technologies that is blurring the lines between the physical, digital, and biological spheres.”

²⁴⁶Poverty, the World Bank at: <https://www.worldbank.org/en/topic/poverty/overview>

²⁴⁷ Christine Lagarde, 2018, Age of Ingenuity: Reimagining 21st Century International Cooperation Eighth Henry A. Kissinger Lecture — Library of Congress Christine Lagarde — Managing Director — International Monetary Fund Washington, DC <https://www.imf.org/en/News/Articles/2018/12/04/sp120418-md-kissinger-speech>

²⁴⁸ The Guardian - Keynes helped us through the crisis – but he's still out of favour, at:

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²⁴⁹ Idem note 247 [Christine Lagarde]

building on the lesson that “Solidarity is self-interest”.²⁵⁰ UNSG Guterres guides us toward a new generation of partnerships and dialogue with governments, international organizations, the private sector and academia as instruments to catalyze a fantastic increase in the well-being of people.²⁵¹ The United Nations as a multi-lateral institution in current reform²⁵² is still in good stead at global level to facilitate such partnerships and dialogue,²⁵³ as member States are still committed to the UN regardless of whether it started as a Westphalian-based phenomenon or not.²⁵⁴ Nevertheless, the type of new Dialogue of Civilisations, Dao or other agreed formulae needs to begin in earnest and urgently. The proven brilliance of the philosophies, ideas and approaches of Westphalian neo-liberalism need to create space for the brilliance of China, Russia and G77 States to also be considered and ensemble to evolve approaches to unblock the protracted legal and ideological debate on RTD and the economics that are essential for its realization.²⁵⁵ This applies equally to NIEO as it does to RTD, to Corporate Social Responsibility, climate change, and to a common and agreed approaches or set of approaches to human rights, and their universally and indivisibility. Different contexts with strengths and weaknesses require varied approaches, correctly adapting financial and economic models to best respond to the human rights, development needs and wellbeing of people. As Kilby notes, the bringing together of all major world actors around the table as equal partners is **THE** challenge ahead where local sovereignty is fully considered when seeking to apply what are the globally accepted human

²⁵⁰ Idem note 247 [Christine Lagarde]

²⁵¹ Secretary General António Guterres, Remarks at the special session on "Cooperation for Peace: Tackling the Root Causes of Global Crises" at <https://www.un.org/sg/en/content/sg/speeches/2017-01-19/secretary-generals-cooperation-peace-remarks>; Indeed, a common theme of many authors cited in this study is the need for more and better Dialogue, or a “Dialogue of Civilisations”, as the most important ingredient toward cooperation and shared action for a common future based on improving human wellbeing.

²⁵² United to Reform at <https://reform.un.org/content/development-reform>

²⁵³ Christian Kreuder-Sonnen and Bernhard Zangl, 2015, Which Post-Westphalia? International organizations between constitutionalism and authoritarianism, *European Journal of International Relations* 2015, Vol. 21(3) 568–594 DOI:10.1177/1354066114548736 at: https://www.researchgate.net/publication/280207607_Which_Post-Westphalia_International_Organizations_between_Constitutionalism_and_Authoritarianism

²⁵⁴ Polly J. Diven John Constantelos, August 2011, The Domestic Foundations of Confidence in the United Nations, *International Journal of Peace Studies* 4(4 2) at: https://www.researchgate.net/publication/305462768_The_Domestic_Foundations_of_Confidence_in_the_United_Nations

²⁵⁵ Idem note 238 [Ling] at page 566 and Conclusion. Otherwise, “it will find itself left out of a major “mainstream” social relationship, despite its economic, political, or even military asymmetries.

rights and other global norms in those [specific] contexts.²⁵⁶ In this endeavour, it is essential that the United States and China provide the leadership and be supported to find the formula for global cooperation to implement RTD needed to end extreme poverty, fight inequality and injustice, and protect our planet. Time is of the essence.

²⁵⁶ Idem note 125 [Patrick Kilby 2017] at pages 24-37

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